United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-1052

BP/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

against

VINCENT DiNAPOLI,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

DUBLER, HAYDON & STRACI
Attorneys for Defendant-Appellant
67 Wall Street
New York, N. Y. 10005

DAVID G. TRAGER
United States Attorney for the Eastern District of New York
Attorney for Plaintiff-Appellee
225 Cadman Plaza East
Brooklyn, N. Y. 11201

UNITED STATES COURT OF APPEALS
FILED
MAR 30 1977
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1977

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX.

	Page
Docket Entries	1a
Indictment	4a
Notice of Motion for Bill of Particulars, Dismissal of Indictment, etc.	6a
Affidavit of Paul A. Victor in Support of Motion	8a
Demand for Bill of Particulars	11a
Letter, Dated June 8, 1976, From Gary A. Woodfield to Paul A. Victor	13a
Notice of Readiness for Trial	16a
Minutes, September 30, 1976 (Decision)	18a
Notice of Motion for Acquittal or New Trial	24a
Affidavit of Paul A. Victor in Support of Motion	25a
Affidavit of Gary A. Woodfield in Opposition to Motion	30a
Reply Affidavit of Paul A. Victor in Support of Motion	33a
Memorandum and Order of Costantino, D.J., January 13, 1977	37a
Certificate of Relief From Disabilities	42a

Page

Excerpts From Transcript 43a

Opening Statement by Mr. Woodfield 49a

Opening Statement by Mr. Coiro 55a

Summation by Mr. Woodfield 360a

Rebuttal by Mr. Woodfield 384a

Judgment 393a

TESTIMONY.

GOVERNMENT'S WITNESS:

Montello, Salvatore:

Direct by Mr. Woodfield 58a

Cross by Mr. Coiro 124a

Cross by Mr. Richman 204a

DEFENDANTS' WITNESSES:

Montella, Helene:

Direct by Mr. Coiro 338a

Montella, Vincent James:

Direct by Mr. Coiro 313a

Direct by Mr. Richman 322a

Cross by Mr. Woodfield 324a

Redirect by Mr. Coiro 336a

UNITED STATES COURT OF APPEALS,

For the Second Circuit.

- -X

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

VINCENT DINAPOLI,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES.

DATE	PROCEEDINGS
10-7-75	Before NEAHER, J - Indictment filed - ordered sealed by the Court.
2-4-76	By Mishler, Ch J - Bench Warrant Ordered and Issued.
2-5-76	Before COSTANTINO, J. - Case called. Indictment ordered unsealed by the Court
2-6-76	Before COSTANTINO, J. - Case called. Bench warrant as to deft ~~xxxxxx~~ vacated. Deft & counselPaul Victor present. Deft arraigned and after being advised of his rights and on his own behalf enters a plea of not guilty. Bail set at $25,000. personal recognizance bond, $1,500 as cash. Motions to be submitted by 3-9-76. Adj'd to 5-10-76 for trial.
2-9-76	Notice of appearance filed.
2/10/76	By SCHIFFMAN,MAG.- Copy of Order for acceptance of cash bail filed
2-26-76	Notice of Motion filed, ret. 3-5-76, for Bill of Particulars, Inspection, disclosure , etc.
3-9-76	Before COSTANTINO J - case called - counsel & deft not present - defts motion for Bill of Particulars, etc. Motion granted in that Court has 30 days to submit Discovery material - decision reserved as to remainder of deffs motion.
5-4-76	Notice of readiness for trial filed
5/17/76	Before COSTANTINO,J.- Case called-adjd to 6/18/76 for status report
6-1-76	76 M 306 inserted in CRR file
6-14-76	Govts Memorandum of Law filed in opposition to defts motion to dismiss.
6-18-76	Before COSTANTINO,J.- Case called and adjd to 9-27-76 for status report
9-27-76	Before COSTANTINO J - case called & adjd to 9-30-76 for trial
9/30/76	Before COSTANTINO, J.- Case called. Deft & Atty present. Case adjd to 10/1/76 for trial.
10-5-76	Before COSTANTINO,J.-Case called-Deft and counsel present-trial ordered and begun ~~xxxxxxxxx~~ jurors selected and sworn-Trial cont'd to 10-6-76.
10/6/76	Stenographers transcript dated 10/5/76, filed.
10/6/76	Before COSTANTINO, J.- Case called. Deft & Counsel present. rial resumed. Trial contd to 10/7/76 at 11:00 a.m.

DOCKET ENTRIES

10/7/76	Before COSTANTINO, J. - Case called. Deft & Counsel present. Trial resumed. Trial contd to 10/12/76.
10-12-76	Before COSTANTINO J - case called - deft & counsel present - trial resumed - trial contd to Oct. 13 - defts move for dismissal - denied
10/13/76	Before COSTANTINO, J.- Case called. Deft &Counsel present. Trial resumed. Court charges Jury. Jurors deliberate. Jury returns and finds deftsguilty as charged.
10/13/76	By COSTANTINO, J.- Order of Transportation and Order of sustenanee filed.
10-18-76	Stenographers transcripts dated 10-6-76;10-7-76;10-12-76; 10-13-76;10-14-76 filed.
12-3-76	Before Costantino, J.- Case Called. Sentence adjd. to 1-7-77.
12-23-76	Notice of Motion filed for a judgment of acquittal RETURNABLE January 3, 1977 at 10:00 A.M. and forwarded to chambers.
1-3-77	Before Costantino, J.- Case Called. Motion for a Judgment of Acquittal etc. argued. Decision reserved. All papers by 1-6-77.
1-3-77	Government's Affidavit in Opposition filed and forwarded to Chambers.
1-7-77	Before COSTANTINO, J. - Case called. Deft & atty present. Sentence adj'd to 1-14-77.
1-13-77	By COSTANTINO J - Memorandum and Order filed denying defts motion for a Judgment of Acquittal or a new trial etc.
1-14-77	Before COSTANTINO J - case called - deft & atty Paul Victor present - deft sentenced for 3 years; to serve 3 months of weekends from Friday at 8PM to Sunday at 8 PM - balance of sentence on probation and to pay a fine of $1,000. Execution of sentence is stayed panding appeal.

1-14-77	Judgment & commitment and order of probation filed - certified copies to Marshal & Probation

BEST COPY AVAILABLE

INDICTMENT.

RJD:PFC:cj
F.#753,544 .

FILED
IN CLERK'S OFFICE
U.S DISTRICT COURT E.D. N.Y.
OCT 7 1975
TIME A.M.....
P.M.....

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- x

UNITED STATES OF AMERICA

-against-

VINCENT "Vinnie" Di NAPOLI, JAMES "Jimmy" SANTAMARIA, EDWARD "Eddie" FEDER, JIMMY DAVIS, DONALD LAUCIRICA, CLINT FROMAL, and RICHARD "Richie" SURRENCY,

Defendants.

- x

Cr. No. _____
(T. 18, U.S.C., §224)

75 CR 741

THE GRAND JURY CHARGES:

On or about and between the 12th day of October, 1970, and the 17th day of October, 1970, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant VINCENT "Vinnie" DI NAPOLI, the defendant JAMES "Jimmy" SANTAMARIA, the defendant EDWARD "Eddie" FEDER, the defendant JIMMY DAVIS, the defendant DONALD LAUCIRICA, the defendant CLINT FROMAL, the defendant RICHARD "Richie" SURRENCY, and SALVATORE MONTELLO named herein as a co-conspirator but not as a defendant, did knowingly and wilfully conspire together and with one another to carry into effect a scheme in commerce to influence by bribery, sporting contests, to wit: to influence the outcome of horse races at Pocono Downs, Pennsylvania, with knowledge that the purpose of such scheme was to influence by bribery the aforesaid sporting contests.

It was part of said conspiracy that the defendants and co-conspirator would bribe jockeys of various "Exacta" races at Pocono

INDICTMENT

Downs, Pennsylvania and thereby affect the outcome of said races.

In furtherance of the said conspiracy and to effect the objectives thereof, the following overt acts were committed in the Eastern District of New York and elsewhere:

OVERT ACTS

1. On or about the 12th day of October, 1970, within the Eastern District of New York, co-conspirator SALVATORE MONTELLO received a telephone call from jockey JIMMY DAVIS from Pocono Downs race course, Wilkes-Barre, Pennsylvania.

2. On or about the 14th day of October, 1970, the defendants VINCENT "Vinnie" Di NAPOLI and JAMES "Jimmy" SANTAMARIA together with co-conspirator SALVATORE MONTELLO travelled from the Eastern District of New York to Wilkes-Barre, Pennsylvania in furtherance of said scheme. (Title 18, United States Code, Section 224).

A TRUE BILL.

William P. Spinola
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

NOTICE OF MOTION FOR BILL OF PARTICULARS, DISMISSAL OF INDICTMENT, ETC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA

-against-

VINCENT "Vinnie" Di NAPOLI, JAMES, "Jimmy" SANTAMARIA, EDWARD "Eddie" FEDER, JIMMY DAVIS, DONALD LAUCIRICA, CLINT FROMAL and RICHARD "Richie" SURRENCY,

Defendants.

Indictment No.
75 CR 741 (MAC)

NOTICE OF MOTION

- -X

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit of PAUL A. VICTOR, sworn to the 23rd day of February, 1976, the indictment herein and all the proceedings heretofore had herein, the undersigned, in behalf of the defendant VINCENT Di NAPOLI, will apply to this Court, before the Honorable Mark A. Costantino, United States District Judge for the Eastern District of New York, at the United States Courthouse at 225 Cadman Plaza East, Brooklyn, New York, on the 5th day of March, 1976, at 10:00 A.M., or as soon thereafter as counsel can be heard for an order, pursuant to the Federal Rules of Criminal Procedure, for the following relief:

1. A Bill of Particulars.

2. Discovery and Inspection.

3. Disclosure of existence of informers.

4. Preservation of all original records and rough notes.

5. Production of all favorable evidence.

6. Hearings with regard to any evidence which may have been improperly or illegally obtained.

NOTICE OF MOTION FOR BILL OF PARTICULARS, DISMISSAL OF INDICTMENT, ETC.

7. Dismissal of the Indictment upon the ground that the crime charged is barred by the statute of limitations or upon the ground that defendant has been denied a Speedy Trial or in the alternative for a hearing to inquire into the circumstances surrounding the delay in indictment and trial.

Dated: New York, New York
February 23, 1976.

Yours, etc.

PAUL A. VICTOR of
DUBLIRER, HAYDON & STRACI
Attorneys for Defendant VINCENT
Di NAPOLI
Office & P. O. Address
67 Wall Street
New York, New York 10005
[212] 943-0880

TO: United States Attorney
for the Eastern District
225 Cadman Plaza East
Brooklyn, New York 11201

AFFIDAVIT OF PAUL A. VICTOR IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA

-against-

VINCENT "Vinnie" DiNAPOLI, JAMES "Jimmy" SANTAMARIA, EDWARD "Eddie" FEDER, JIMMY DAVIS, DONALD LAUCIRICA, CLINT FROMAL and RICHARD "Richie" SURRENCY,

Defendants.

AFFIDAVIT

- - - - - - - - - - - - - - - - - - -X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PAUL A. VICTOR, being duly sworn, says:

1. That he is an attorney, associated with the law firm of DUBLIRER, HAYDON & STRACI, attorneys for the defendant, VINCENT Di NAPOLI and makes this affidavit in support of the within motion.

2. That on or about the 3rd of February, 1976 the defendant herein was informed that he was wanted pursuant to a warrant issued under a sealed indictment which was allegedly filed on October 7, 1975, (to wit, 5 days prior to the expiration of the 5 year statute of limitations). The said indictment charges the defendant, VINCENT Di NAPOLI and others with having engaged in a sports bribery conspiracy on or about and between the 12th day of October. 1970 and the 17th day of October, 1970 in violation of Section 224 of Title 18 of the United States Code.

3. That on the 4th day of February, 1976 the defendant VINCENT Di NAPOLI voluntarily surrendered and pled not guilty to the aforementioned charges.

AFFIDAVIT OF PAUL A. VICTOR IN SUPPORT OF MOTION

VI. HEARINGS RE: ILLEGALLY OR IMPROPERLY OBTAINED EVIDENCE.

14. The defendant, VINCENT Di NAPOLI is at present unable to move to suppress any evidence which may have been illegally or improperly obtained by the Government, since he has not yet been informed of the nature of the Government's case nor the nature of the evidence which the Government intends to introduce. It is respectfully requested that this aspect of defendant's motion be deferred until after defendant has been given a bill of particulars and the discovery and inspection and other relief requested herein.

VII. DISMISSAL OF THE INDICTMENT

15. The defendant moves for the dismissal of the indictment herein upon the ground that said action has been barred by the Statute of Limitations, or in the alternative upon the ground that the defendant has been denied a Speedy Trial in violation of the United States Constitution, the Second Circuit's Rules relating to the prompt disposition of Criminal Cases and the Federal Rules of Criminal Procedure.

16. The indictment herein states that the crime charged is alleged to have occurred "on or about and between the 12th day of October and the 17th day of October, 1970, both dates being approximate. . . ." [emphasis added].

17. The indictment herein is alleged to have been filed on October 7, 1975, to wit, 5 days prior to the expiration of the Statute of Limitations [if the above said approximate dates are accurate]. The defendants herein were not even notified of said indictment until February of 1976, to wit, 5 years and 4 months from the alleged occurrence of said crime. The prejudice to the defendants is unmistakeable.

AFFIDAVIT OF PAUL A. VICTOR IN SUPPORT OF MOTION

The mere lapse of time will make it extremely difficult to locate witnesses and establish alibi, and this will be made even more impossible since the dates alleged are only approximate.

18. The defendant, VINCENT Di NAPOLI is respectfully requesting that at the very least, a hearing be granted, and that the Government thereat be required to prove:

(a) a reasonable basis for the pre-indictment and post-indictment delay,

(b) the exact date of occurrence and that the Statute of Limitations has not expired,

(c) that the delay herein was not as a result of any fault or negligence upon the part of the Government,

(d) that the defendants have not been prejudiced and denied a speedy trial and/or due process thereby.

WHEREFORE, it is respectfully requested that the relief requested in the Notice of Motion be granted.

Sworn to before me this
23rd day of February, 1976.

Marie Picone

MARIE PICONE
COMMISSIONER OF DEEDS
City of New York 3-536
Cert. Filed in Bronx County
Commission Expires May 1, 1976

PAUL A. VICTOR

DEMAND FOR BILL OF PARTICULARS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA : Indictment No.
: 75 CR 741 (MAC)
-against-
:
VINCENT "Vinnie" Di NAPOLI, JAMES, "Jimmy" SANTAMARIA, EDWARD "Eddie" FEDER, JIMMY DAVIS, DONALD LAUCIRICA, CLINT FROMAL and RICHARD "Richie" SURRENCY, :

Defendants. :
- - - - - - - - - - - - - - - - - - -X

DEMAND FOR A BILL OF PARTICULARS

1. Set forth precisely the name of each defendant and/or co-conspirator with whom the defendant, VINCENT Di NAPOLI directly conspired.

2. With regard to each said person with whom the defendant, VINCENT Di NAPOLI directly conspired, set forth:

(a) The exact place where said act took place.

(b) The exact date in which said act took place.

(c) The exact time when said act took place.

(d) The names and addresses of all other persons present.

3. (a) Wherever "on or about" is used in the indictment, set forth the exact time, date and place of the event.

(b) State the manner and means by which said dates were calculated and ascertained.

4. State the exact manner in which the defendant VINCENT Di NAPOLI participated in the conspiracy charged, and each and every act he is alleged to have personally performed, and the exact date, time and place of same.

DEMAND FOR BILL OF PARTICULARS

31. With regard to the presentation of this case to the Grand Jury and the return of the indictment, set forth:

(a) The first date the Government received any information regarding the crime charged herein.

(b) The first date that any evidence was presented to a Grand Jury.

(c) The last date that any evidence was presented to a Grand Jury.

(d) The date the Grand Jury voted an indictment.

(e) The date when the indictment herein was filed.

(f) The reason the indictment herein was sealed.

Dated: New York, New York
February 23, 1976

Yours, etc.,

PAUL A. VICTOR of
DUBLIRER, HAYDON & STRACI
Attorneys for Defendant DiNapoli
67 Wall Street
New York, New York 10005
[212] 943-0880

LETTER, DATED JUNE 8, 1976, FROM GARY A. WOODFIELD TO PAUL A. VICTOR.

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

TRP:GAW:mb
F.#753,544

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

June 8, 1976

Paul A. Victor, Esq.
67 Wall Street
New York, New York 10005

Re: United States v. DiNapoli, et al.
Docket No. 75 CR 741

Dear Mr. Victor:

This letter is in response to your motions made in the above-captioned case on behalf of your client, Vincent DiNapoli, dated February 23, 1976.

BILL OF PARTICULARS

1. The Government does not contend at this time that there are any additional defendants or co-conspirators other than those contained in the indictment.

2. Denied.

3. Denied.

4. Denied. The Government's proof at trial will show that the defendant Vincent DiNapoli participated in the conspiracy by, among other acts, providing approximately $5,000 for the purchase of betting tickets and bribing jockeys.

5. Denied.

6. Denied.

7. Denied.

8. Yes.

9. Denied.

10. See (1) above.

LETTER, DATED JUNE 8, 1976, FROM GARY A. WOODFIELD TO PAUL A. VICTOR

Paul A. Victor, Esq. /3/ June 8, 1976

17. Denied.

18. Denied.

19. No statements were obtained by the Government from your client, Vincent DiNapoli.

20. Denied.

21. No searches of any type have been performed by the Government in this case.

22. The Government has not engaged in any "mail cover" in this case.

23. The Government has not engaged in any type of wiretapping, electronic or photographic surveillance in this case.

24. Denied. This office will conduct the requested check of the pertinent government agencies and relate the results to you.

25. See 24 above.

26. Denied.

27. The Government has performed no physical, mental or scientific tests concerning this case.

28. The Government is not aware of any information which may be helpful to your client's defense.

29. Denied. This information will be provided at the time of trial.

30. Denied. See 29 above.

31. A. The Government first received information of the crime charged in this indictment on approximately July 14, 1975.

B. Evidence on this case was presented to the Grand Jury on October 7, 1975.

C. October 7, 1975.

D. October 7, 1975.

LETTER, DATED JUNE 8, 1976, FROM GARY A. WOODFIELD TO PAUL A. VICTOR

Paul A. Victor, Esq. /4/ June 8, 1976

E. October 7, 1975; the indictment was sealed at that time and unsealed on February 5, 1976.

F. The investigation into these defendants' involvement into other crimes was continuing, which resulted in indictments 76 CR 46, 80, 81, 82, 83 and 76 CR 218.

DISCOVERY AND INSPECTION

1. A. Your client, Vincent DiNapoli, made no statements to any Government agent; statements made to non-government parties, during the commission of the crime will be provided pursuant to Title 18, U.S.C. §3500.

B. See (A) above.

C. No wiretapping or eavesdropping was conducted by the Government in this case.

D. Denied.

2. Denied.

3. No scientific tests have been performed by the Government in this case.

4. Nothing was seized from your client by the Government.

5. See 4 above.

6. A copy of your client's arrest warrant is available in the Court file.

7. Denied.

8. Denied. The Government intends to call at trial all non-cumulative witnesses. A list of other witnesses not called will be provided upon your request at the time of trial.

9. No such tests or experiments were performed.

10. Denied.

11. Denied.

NOTICE OF READINESS FOR TRIAL.

RJD:PFC:cj
F.#753,544

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA :

-against- :

VINCENT "Vinnie" DiNAPOLI, :
JAMES "Jimmy" SANTAMARIA,
EDWARD "Eddie" FEDER, JIMMY DAVIS,
DONALD LAUCIRICA, CLINT FROMAL
RICHARD "Richie" SURRENCY, :
Defendant(s)

- X

NOTICE OF READINESS FOR TRIAL

Court Docket No.

75 CR 741

S I R (S) :

PLEASE TAKE NOTICE that the United States is ready for trial.

Since the defendant(s) ~~is~~/are not in custody a trial date will be requested as soon as the case can be reached by the Court, subject to receiving three days' advance notice of the actual date for trial.

Dated: Brooklyn, New York
May 3, 19 76

Yours, etc.

DAVID G. TRAGER
United States Attorney
Eastern District of New York

By Paul F. Corcoran
PAUL F. CORCORAN
Assistant U. S. Attorney

NOTICE OF READINESS FOR TRIAL

TO:

HONORABLE MARK A. COSTANTINO
United States District Judge

Attorney(s) for Defendant(s)

Cardin & Gitomer, Esqs.
Suite 233, Equitable Building
Calvert and Fayette Streets
Baltimore, Maryland 21202

Paul A. Victor, Esq.
67 Wall Street
New York, New York 10005

Gustave Newman, Esq.
522 Fifth Avenue
New York, New York 10036

Edward Kelly, Esq.
The Legal Aid Society
Federal Defender Unit
26 Court Street
Brooklyn, New York 11201

Murray Richman, Esq.
1930 Grand Concourse
Bronx, New York

BEST COPY AVAILABLE

MINUTES, SEPTEMBER 30, 1976 (DECISION).

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-741

VINCENT DINAPOLI, EDWARD FEDER, JIMMY DAVIS and CLINT FROMAL, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

September 30, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

I Hereby Certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Steven A Tessler

STEVEN TESSLER
ACTING OFFICIAL COURT REPORTER
Official Court Reporter
U. S. District Court

MINUTES, SEPTEMBER 30, 1976 (DECISION)

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: G. A. WOODFIELD,
Assistant U.S. Attorney

PAUL A. VICTOR, ESQ.
-and-
MICHAEL COIRO, ESQ.

Attorneys for Defendant VINCENT DINAPOLI

MURRY RICHMOND, ESQ.

Attorney for Defendant EDWARD FEDER

EDWARD J. KELLY, ESQ.

Attorney for Defendant JIMMY DAVIS

JAMES GITTER, ESQ.

Attorney for Defendant CLINT FROMAL

and we come down for my day, this case is ready. I have been ready to try the case since the first day he came into the Court. The Government is ready now. The case will be tried, there will be no adjournments on it, no delays, nothing whatsoever.

MR. GITOMER: There are some pre-trial motions.

THE COURT: There is one I am familiar with, and is that your motion for speedy trial?

MR. GITOMER: Yes, there are five or six more I filed in March. I also have a motion on speedy trial for which I believe a hearing is ready.

MR. WOODFIELD: I think we should handle those motions before the selection of the jury.

THE COURT: Why don't I permit you to go up to Judge Weinstein, and as soon as you're through come back down to the Courtroom. We'll make it 11:30.

MR. WOODFIELD: I know Judge Weinstein is starting his calendar for 10:30 like the past few days he has had quite a number of them on, so 11:30 might not be too realistic.

Might I make a suggestion your Honor: because a half a day is no real difference, I am a board member of the Appeals Board, we have meetings on Thursday afternoons. Can we put this down for the first thing tomorrow morning?

THE COURT: Let's dispose of the motion today. Even for disposition of the motion. I don't know if there is any jurors. We'll call now. Will you wait a few minutes and see if there is any jurors.

MR. WOODFIELD: If we could get the motion and a jury selection out of the way this week I think we should.

THE COURT: I wanted to start, get the jury selection either today or tomorrow, or go over to Tuesday since Monday is a Jewish holiday and Tuesday I expect to start this case and go right through with it. We shouldn't take very long.

MR. WOODFIELD: That is satisfactory to the Government, your Honor.

THE COURT: Who is the attorney? I think we will issue a bench warrant for him. I don't think he is going to show up.

(Whereupon a short recess was taken.)

(Whereupon after recess the following occurred in open court.)

THE COURT: First the motion I am going to place upon the record, we have some memorandum for you later on. The Court rules on the motion that has been before the Court. I will place them on the record.

A short statement as to each one and the

position the Court has taken.

Now, defendant's motion to dismiss for pre-indictment delay is denied. It first appears that the Government's first learned of the alleged criminal activities in July of '75. The indictment was returned in October '75. It's not clear that there was lengthy delay. Moreover even if delay is shown as actually prejudice has been shown, no Government scheme to get a tactical advantage has been shown. 404 United States 307 1971. On the question of whether the indictment states a Federal offense, 18 U.S.C. Section 324, not 18 U.S.C. 1952 controls, defines a scheme in -- any scheme effectuated in whole or in part to the use of any facility for transportation or communication interstate commerce. The overt action alleged here satisfies the requirements under U.S.C. 1852, is not relevant here.

The motion to -- the motion on post-indictment delay, the Court likewise denies that motion. In that the interest of the public has been effected or otherwise. Short memorandum will follow on that.

Now, proceed.

MR. GITOMER: In my bill of particulars on behalf of -- from all, I ask the United States to furnish to my clients the names of the people that

I have a note now, my jury before Judge Weinstein has a note and my presence is required immediately.

It's probably just for documents which haven't been given to the jury.

MR. COIRO: In regard to the motion to dismiss I have requested a hearing into the reasons for the post-indictment delay, especially in view of the fact there was such a substantial pre-indictment delay.

THE COURT: Pre-indictment delay was well explained, they didn't find out about it until '75, you can't do something about something you know nothing about.

MR. COIRO: I would like to have a hearing on the post-indictment delay.

THE COURT: You're talking about the time of the arraignment to the time the indictment being filed?

MR. WOODFIELD: I too object, there is no hearing necessary.

THE COURT: I have reviewed the entire matter. I will deny the hearing at this time.

MR. GITOMER: For clarification, you deny the post-indictment delay, is that also the speedy trial?

DEFENDANT NAPOLI'S NOTICE FOR ACQUITTAL OR NEW TRIAL.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA

-against-

NOTICE OF MOTION

VINCENT DI NAPOLI,
EDWARD FEDER,

Defendants.
----------x

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of PAUL A. VICTOR verified on December 21, 1976, and upon the transcript of the trial herein, the undersigned will apply to this Court before the Hon. Mark A. Costantino, United States District Judge for the Eastern District of New York at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 3rd day of January, 1977 at 10:00 A.M. or as soon thereafter as counsel can be heard for a judgment of acquittal under F.R. Cr. P. 29(c) or in the alternative, for a new trial in the interest of justice under F.R.Cr.P. 33, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
December 21, 1976

Yours, etc.

DUBLIRER, HAYDON & STRACT
By Paul A. Victor
Attorneys for Defendant Di Napoli
Office & P.O. Address 67 Wall Street
New York, New York 10005
[212] 943-0880

AFFIDAVIT OF PAUL A. VICTOR IN SUPPORT OF DEFENDANT NAPOLI'S MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

VINCENT DI NAPOLI,
EDWARD FEDER,
Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

PAUL A. VICTOR, being duly sworn, says:

1. I am one of the attorneys for the defendant DiNapoli. I make this affidavit in support of said defendant's motion for judgment of acquittal under F.R. Cr. P. 29(c) or, in the alternative for a new trial in the interest of justice under F.R.Cr. P.33. The reason this affidavit is made by me and not by the defendant is that it deals with matters of law.

Montella's hostility toward DiNapoli.

2. I respectfully suggest that the Court erred in refusing to allow defendant DiNapoli to establish the hostility of Salvatore Montella, the Government's key witness toward said defendant by extrinsic evidence, on the ground that defendant had not first cross-examined Montella as to his hostility (Transcript pp. 459-470).

3. The basic principle involved is stated in 3 Weinstein's Evidence, Para. 607(03) at pages 607-18:

> "The exposure of a witness' motivation in testifying is so significant that in a criminal case curtailment of this right may amount to a denial of confrontation

(citing Davis v. Alaska, 415 U.S. 308 [1974]) or due process (citing Giglio v. United States, 405 U.S. 150 [1972]) rights."

4. Particularly is this so where, as in the case at bar, the witness involved is the Government's key witness. Assistant U.S. Attorney Woodfield said that this case involved the testimony of "an accuser, Salvatore Montella, against the accused, Mr. DiNapoli" (Tr. pp. 273-274). As the Court said in United States v. Harris, 501 F.2d 1 (9 Cir. 1974):

(at p. 8) ". . .In the present case, the cross-examination of the Government informant was of utmost importance since his reliability and credibility may well have determined the guilt or innocence of appellants."

(at p. 9) ". . .It is essential, when the witness' credibility is critical to the Government's case, that defense counsel 'be given a maximum opportunity to test that credibility by exploring the witness' motivation for testifying.' United States v. Rodriguez, 439 F.2d 782, 783."

5. As to laying a foundation, the court said in the case at bar (Tr. p. 461) "Why didn't you ask him, you would frame people?" and finally (Tr. p. 470) "Maybe if he was asked the question on cross-examination, I might have considered it."

6. In United States v. Barrett, 539 F.2d 244 (1 Cir. 1976) the court said:

". . .It is clear, however, that Fed. R. Evid. 613(b) has relaxed any absolute requirement that this practice (laying a foundation during cross-examination for introducing extrinsic evidence) be observed only requiring instead that the witness be

> afforded at some time an opportunity to explain or deny, and for further interrogation." [page 254]
>
> "The foregoing indicates that while good practice still calls for the laying of a foundation, one is not absolutely required . . .Here,however, the court dismissed the evidence out of hand and made no inquiry as to Adams' availability. . .We hold, therefore, that it was error to exclude the testimony." [pages 255-256]

7. Having excluded for lack of foundation the extrinsic evidence to show bias, I respectfully suggest that it was error for the court to refuse to permit defendant to recall Montella in order to lay the foundation required by the court. When the court finally ruled (Tr. p. 471) "No, I won't let it in", deponent asked that Montella be recalled since defendant did not know "where to subpoena him." (Tr. pp. 471, 475). The court refused to recall Montella or to require the prosecution to furnish his address so that defendant could subpoena him. The court will recall that the Government kept Montella in a secret place during the trial.

8. In United States v. Blackwood, 456 F.2d 526 (2 Cir. 1972) the court said (p. 530):

> ". . .We believe that the better practice would have been to allow Cohen to recall Coleman for the limited purpose of examining him with respect to his prior inconsistent statements, since it would have caused but a minor disruption of the trial and could conceivably have had some effect on the jury."

9. Therefore, I respectfully suggest that it was error for the court to refuse to permit Helene Montella to testify, inter alia, that SalvatoreMontella had told her "that he would never go back

to prison and if necessary would frame people if he had to" (Tr p. 459), and to testify concerning a conversation with her husband in which he told her of a conversation he had had with defendant DiNapoli (Tr. pp. 476-477). In addition, I suggest that it was error to refuse to permit Deborah Scarpadi to testify that Montella had told her that "he was going to frame people tostay out of prison." (Tr. p. 475)

10. The court's refusal to permit defendant to establish Montella's hostility against DiNapoli was aggravated by the prosecutor's argument in summation in one way or another that"There has not been shown nor does there exist motives for (Montella and Davis) to lie from that stand" (Tr. p. 505).

11. I respectfully suggest that the court erred also in denying a motion for mistrial because of the conduct of the prosecutor in causing Salvatore Montella, the accuser, to testify that someone tried to kill him while in the West Street jail (Tr. pp. 32-34). This, too, was aggravated by the prosecutor's argument in summation that "There came a time when (Montella) indicated his life was in danger" (Tr. pp. 505-506). The court erred also in denying a motion for mistrial because of the prosecutor's blatant appeal to bias and prejudice in the cross-examination of Vincent Montella, a defense witness, with the question whether Vincent "vehemently disliked" Salvatore Montella "because he broke the honor code among the Italians and he is cooperating with the Government ."(Tr. pp. 425-426).

12. I respectfully suggest that the matters referred to above constitute plain error within the meaning of F. R. Cr. P. 52. As the Supreme Court said in Kotteakos v. United States, 328 U.S. 750,

AFFIDAVIT OF PAUL A. VICTOR IN SUPPORT OF DEFENDANT NAPOLI'S MOTION

764-765 (1946):

> ". . .But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand."

This language was used in connection with the standard normally to be applied on review in federal cases. I suggest that it is equally applicable on motions for acquittal or for new trial in the interest of justice.

13. I can best conclude this discussion in the words of 8B Moore's Federal Practice, Para. 52.03, p. 52-9:

> "But, if the ultimate decision is to turn on a balance of probabilities and the balance is not clearly on the side of harmlessness, defendant should get the benefit of the doubt."

WHEREFORE, deponent prays for a judgment of acquittal or in the alternative for a new trial in the interest of justice.

Sworn to before me this

21st day of December, 1976

BRUCE J. COOPER
Notary Public, State of New York
No. 4502270
Qualified in Rockland County
Certificate filed in New York County
Commission Expires March 30, 1977

AFFIDAVIT OF GARY A. WOODFIELD IN OPPOSITION TO DEFENDANT NAPOLI'S MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

-against-

VINCENT DINAPOLI,

Defendant.

AFFIDAVIT IN OPPOSITION

75 CR 741

- - - - - - - - - - - - - - - - - - - X

STATE OF NEW YORK)
) SS:
COUNTY OF KINGS)

GARY A. WOODFIELD, Assistant United States Attorney for the Eastern District of New York, deposes and says:

1. I am familiar with the facts and circumstances of the above-captioned matter and submit this affidavit in opposition to the defendant Vincent DiNapoli's motion for either a judgment of acquittal or for a new trial.

2. The defendant DiNapoli argues that the Court erred in not allowing him to call witnesses to prove the government's witness Salvatore Montella's hostility toward the defendant DiNapoli. In support of this claim, the defendant DiNapoli has not only erred in stating the applicable law in the Second Circuit, but has also misstated the record.

3. The Court, in ruling that the alleged testimony regarding Salvatore Montella's bias and motive was inadmissible, properly concluded that no foundation for this testimony had been elicited by defense counsel in their cross-examination of Montella (Tr. p. 470). The defendant DiNapoli now contends that the Court refused him

the opportunity to recall Montella and that the prosecution failed to "furnish his address so that defendant could subpoena him." (Defendant's motion, p. 3). The trial record belies this claim.

4. At no time did the Court refuse the defendant the opportunity to call Salvatore Montella as their witness. Moreover, the government indicated to the defendant that Montella would be made available to them if they so desired (Tr. p. 474). The defendant DiNapoli who called witnesses in his defense, never requested that Montella be produced. To now argue that the Court and prosecution prevented DiNapoli from calling Salvatore Montella as a witness is disingenuous at best.

5. The main thrust of DiNapoli's argument is that the Court erred in ruling inadmissible extrinsic evidence allegedly concerning Montella's motive and bias because the defendant failed to properly lay a foundation for this evidence. While the defendant cites apparent authority for his argument, he fails to mention this Circuit's most recent decision directly on point. United States v. Harvey, ____F.2d____, Slip. Op. 1335, (2d Cir.) decided November 24, 1976. In Harvey, the Court of Appeals reversed a bank robbery conviction because the trial court refused to allow the defendant to introduce extrinsic evidence that the government's chief identification witness had previously evidenced a motivation to lie about the defendant. In so doing the Court of Appeals delimited the circumstances when such evidence is admissible stating (6033):

> "This Circuit follows the rule, applicable in a number of other Circuits, that a proper foundation must be laid before extrinsic evidence of bias may be introduced. [cites omitted]. Prior to the proffer of extrinsic evidence, a witness must be provided an opportunity to explain the circumstances suggesting bias. [cites omitted]."

6. While recognizing that Rule 613(b), Federal Rules of Evidence, relaxes this traditional foundation requirement as to the degree of specificity required in confronting the witness, the Court of Appeals, nevertheless held that the witness must still be provided an "opportunity to explain or deny a prior inconsistent statement" United States v. Harvey, supra at 6033, (quoting from Fed. R. Evid. 613(b)). Without such a proper foundation, the introduction of extrinsic evidence on the defendant's case would be wholly improper.

In the instant case, a thorough search of the transcript reveals that, in fact, defense counsel never asked Montella questions regarding his alleged motive or bias in testifying. Therefore, this Court properly found that no foundation had been laid, and that the extrinsic testimony was inadmissible (Tr. pp 470). The defendant's attempt to remedy the deficiencies in his trial tactics by a motion for a new trial should in all respects be denied.

I declare under penalty of perjury that the foregoing is true and correct.

REPLY AFFIDAVIT OF PAUL A. VICTOR IN SUPPORT OF DEFENDANT NAPOLI'S MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA, 75 CR 741

-against-

VINCENT DINAPOLI, REPLY AFFIDAVIT

Defendant.
- - - - - - - - - - - - - - - - - -X

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

PAUL A VICTOR, being duly sworn, says:

1. I make this affidavit in reply to the answering affidavit of Assistant United States Attorney Gary A. Woodfield and in support of defendant DiNapoli's motion for a judgment of acquittal or for a new trial in the interest of justice.

The Court erred in refusing to permit the recall of Montella, despite defendant's request and the Government's consent.

2. Mr. Woodfield states (Answering Affidavit para 4) that the defendant DiNapoli "never requested that Montella be produced" and "At no time did the Court refuse the defendant the opportunity to call Salvatore Montella as their witness." This is simply not so.

3. The record shows that the defendant called Helene Montella as a witness (Tr. 455). Defendant started to examine her concerning visits to her husband while the latter was confined at Lewisberg (Tr. 457-458). The Court upheld the Government's objection to this line of questioning as irrelevant (Tr. 458). Defense counsel then offered to prove by this witness that Montella told his wife in the presence of

others "that he would never go back to prison, and if necessary would frame people if he had to" (Tr. 459) and that, "while a fugitive when he called Mr. DiNapoli for help and was refused and he said, I'll get that fat bastard" (Tr. 464, 469-470).

4. The Court ruled, "I couldn't reconcile myself to let it in. Maybe if he was asked the question on cross-examination, I might have considered it" (Tr. 470). The Court repeated its ruling, "No, I won't let it in, I will come to that conclusion"(Tr. 471).

5. Thereupon, defense counsel requested, "I am asking for a recall of Mr. Montella" (Tr. 471). The Court ruled, "He was here. You knew what you are telling me now" (Tr. 472), and concluded, "I will stay with my position" (Tr. 473).

6. There followed this exchange (Tr. 474):

> "MR. VICTOR: We want Mr. Montella I'd like his whereabouts so he can be subpoenaed. If you don't want him on the stand, fine, but I want (him) her(e).
>
> MR. WOODFIELD: Mr. Montella will be available to the defendants if they wish to - -
>
> MR. VICTOR: As a hostile witness ... ."

7. The Court denied defendant's request for the recall of Montella despite the Government's consent thereto, saying "I have made my ruling" (Tr. 475).

8. These quotations from the transcript demonstrate that Mr. Woodfield's statements - that defendant "never requested that Montella be produced" and "At no time did the Court refuse the defendant the opportunity to call Salvatore Montella as their witness" - are in error.

REPLY AFFIDAVIT OF PAUL A. VICTOR IN SUPPORT OF DEFENDANT NAPOLI'S MOTION

9. Since this trial posed the classic situation of an accuser against an accused, the Court's refusal to permit the defendant to expose Montella's motivation for accusing DiNapoli is so significant as to amount to a denial of confrontation rights (Davis v. Alaska, 415 US 308) or due process rights (Giglio v. U. S.,405 US 150).

A proper foundation was laid for offering extrinsic evidence on Montella's bias against DiNapoli.

10. The Government itself first put in issue Montella's motive for testifying. The Government sought to convince the Jury on Montella's direct examination that his motive for testifying was that "They tried to kill me" in the Federal House of Detention on West Street (Tr. 32) and that he agreed "to cooperate with the Government" "On account of what happened to me in West Street" (Tr. 32-33). On cross-examination, Montella repeated that "the only reason he decided to cooperate was "Because they tried to kill me" and "Because (I) now have become a good and truthful citizen" (Tr. 210-211). Montella also testified on cross-examination, "I was cooperating before I even got immunity (Tr. 108), although it appeared from the affidavit of Assistant United States Attorney Paul Corcoran that Montella refused to testify absent a grant of immunity (Tr. 109-112).

11. Thus the issue of Montella's bias or lack of it in bearing witness against DiNapoli was first posed by the Government. This is not a case where the issue of the bias of a prosecution witness was raised for the first time on cross-examination of the witness or on the defendant's case. Here, the Government opened the door. The Government laid the foundation for the offer by defendant of extrinsic evidence on the subject of Montella's bias and this foundation was developed by defendant's

counsel on his cross-examination of Montella.

The Court cut off completely a probative inquiry bearing on a valid defense.

12. The Court's refusal to permit extrinsic evidence of Montella's bias upon the ground that no foundation had been laid, and the Court's subsequent refusal to permit the recall of Montella (requested by defendant and consented to by the Government) to supply the alleged lack of foundation, cut off completely a probative inquiry bearing on a valid defense. The Court effectively excluded all evidence of Montella's hostility toward defendant DiNapoli, so that the prosecutor could say in summation, "There has not been shown nor does there exist motives for (Montella and Davis) to lie from that stand" (Tr. 505).

13. Montella's testimony was critical to the Government's case against DiNapoli. "(D)enial of the opportunity to raise a reasonable doubt . . . by showing possible bias was prejudicial to (DiNapoli's) right to a fair trial." United States v. Harvey, ___F2d___, Slip op.1335 (2d Cir) decided Nov. 24, 1976, at 6036.

Sworn to before me this
7th day of January, 1977.

PAUL A. VICTOR

CHARLES HAYDON
Notary Public, State of New York
No. 6914735
Qualified in Westchester County
Commission Expires March 30, 19..

MEMORANDUM AND ORDER OF COSTANTINO, D.J., JANUARY 13, 1977.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

75-CR-741

v.

MEMORANDUM and ORDER

VINCENT DiNAPOLI

JAN 13 1977

----------x

COSTANTINO, D.J.

On October 13, 1976, Vincent DiNapoli was found guilty by a jury of a violation of 18 U.S.C. § 224. He now moves for a judgment of acquittal under Fed.R.Crim.P. 29(c), or, in the alternative, for a new trial in the interest of justice under Fed.R.Crim.P. 33.

One of the chief government witnesses at the trial was Salvatore Montella, an unindicted co-conspirator. As part of the defendant's case, he sought to have Montella's wife testify that her husband had stated to her that he would frame people if necessary to avoid going back to jail, and that he would "get that fat bastard," referring to the defendant DiNapoli. This court excluded Mrs. Montella's testimony on the grounds that since Mr. Montella had been asked no questions on cross examination relating to the alleged statements, a proper foundation

had not been laid for Mrs. Montella's testimony.

While it is true that bias of a witness is not a collateral issue and that extrinsic evidence is admissible to show such bias, see United States v. Haggett, 438 F.2d 396 (2d Cir. 1971), it is also true that before that evidence is admissible, a proper foundation must have been laid. United States v. Harvey, No. 76-1183, Slip Op. (2d Cir., decided November 24, 1976). As the Second Circuit stated in Harvey, "Prior to the proffer of extrinsic evidence [of bias], a witness must be provided an opportunity to explain the circumstances suggesting bias." Slip opinion at 6033 (emphasis added).

It is clear in this case that at no time did the defendant's counsel, on cross examination of Salvatore Montella, ask him directly whether he had ever made the alleged statements about which Mrs. Montella would have testified. It is contended, however, that a proper foundation was laid for Mrs. Montella's testimony when the government asked Mr. Montella to explain his decision to cooperate with the government, thereby placing his motive to testify in issue. (Reply Affidavit, p. 3) The government itself, it is argued, laid the foundation for

extrinsic bias testimony by "opening the door" on the issue of Montella's reason for testifying. The rule in Harvey, supra, remains clear, however, that before extrinsic bias testimony will be admitted, the witness must be provided an opportunity to explain or deny the specific statements or actions which allegedly give rise to the inference of bias. See United States v. Harvey, supra. The witness here was not given that opportunity, and therefore, notwithstanding the possible effect of Mrs. Montella's testimony on Mr. Montella's credibility, her testimony was properly excluded.

The defendant also alleges that he was denied the right to recall Mr. Montella in order to lay the foundation required by the court. In support of this contention, the defendant quotes certain excerpts from the transcript of the discussion between the court and counsel relating to the propriety of Mrs. Montella's testimony. One such excerpt mentioned by the defendant appears at page 473 of the transcript wherein the court stated,"I will stay with my position." On pages 472-473 of the transcript, however, the attorneys for defendant DiNapoli made the following statements:

Mr. Victor: I am asking for

Mr. Montella's whereabouts.

. . .

Mr. Coiro: What about the question of the fact that I state that this witness has waived the [husband-wife] privilege.

. . .

Mr. Coiro: He [Montella] stated that he gave his wife money. She is prepared to testify that she practically made herself destitute selling furniture.

The court's statement on page 473 that it would stay with its position refers to its ruling (1) that it would not require the government to make Montella's whereabouts known to the defendant, since Montella was being protected under the Witness Protection Program; and (2) that the testimony relating to the question of whether or not Montella gave his wife money was collateral, and, therefore, was excludable at the court's discretion. Thus, the statement that the court would abide by its position was in no way a denial of the defendant's request to recall Mr. Montella.

The following exchange is also quoted to support the defendant's contention that the court denied him the opportunity to recall Mr. Montella (Tr. p. 474-475):

> Mr. Victor: We want Mr. Montella. I'd like his whereabouts so he can be subpoenaed. If you don't want him on the stand, fine, but I want [him] her[e].
>
> Mr. Woodfield [Ass't U.S. Attorney]: Mr. Montella will be available to the defendants if they wish to . . .
>
> Mr. Victor: As a hostile witness . . . .
>
> The Court: I will stay with my ruling. I have made my ruling.

Again, however, the court's statement was directed to the defendant's demand for the whereabouts of Mr. Montella. The government agreed to produce Montella and there was thus nothing more for the court to do; yet no further request was made by the defendant to have Montella brought back to court.

Since the record does not support the defendant's claim that he was prevented by the court from calling Mr. Montella, and since none of the other contentions merit the relief sought, the motion for a judgment of acquittal under Fed.R.Crim.P. 29(c), or in the alternative, for a new trial under Fed.R.Crim.P. 33 is denied. So ordered.

U. S. D. J.

CERTIFICATE OF RELIEF FROM DISABILITIES.

STATE OF NEW YORK

CERTIFICATE OF RELIEF FROM DISABILITIES

FOR COURT OR BOARD OF PAROLE

Docket, File, or other Identifying No.

Ind. #1910/70

Case # 51,217

This certificate is issued to the holder to grant relief from all or certain enumerated disabilities, forfeitures, or bars to his employment automatically imposed by law by reason of his conviction of the crime or of the offense specified herein.

This certificate shall NOT be deemed nor construed to be a pardon.

SEE REVERSE SIDE FOR EXPLANATION OF THE REGULATION GOVERNING THIS CERTIFICATE

The Original Certificate is to be presented to the person to whom awarded. One copy is to be retained by the issuing agency, and one copy is to be filed with the N.Y.S. Identification and Intelligence System, Executive Park, Stuyvesant Plaza, Albany, N.Y.

1. For use by NYSIIS	HOLDER OF CERTIFICATE			3. NYSIIS Number (If not known, supply fingerprints to NYSIIS. If fingerprints are unobtainable, complete items 15-18 below.)
	2. Last Name	First Name	Middle Initial	
	DINAPOLI	VINCENT		

4. Crime or offense for which convicted	5. Date of arrest	6. Date of sentence
Conspiracy-3rd ("A" Misd.)	Feb. 14, 1970	Feb. 15, 1972

7. Court of disposition (Court, Part, Term, Venue)	8. Certificate issued by:
Supreme Court State of New York (Justice Nolia)	[a] X COURT INDICATED IN NO. 7 [b] STATE BOARD OF PAROLE

9. Date this certificate issued	10. If this Certificate replaces Certificate of Relief From Disabilities previously issued, give date of previous Certificate.
MAR 20 1973	Date: [X] Not Applicable

FILED

SUPREME COURT CLERK'S OFFICE
BRONX COUNTY

11. CHECK ONE BOX ONLY

This certificate shall:

[a] Relieve the holder of all forfeitures, and of all disabilities and bars to employment, excluding the right to retain or to be eligible for public office, by virtue of the fact that this certificate is issued at the time of sentence. The Date of Sentence in this case must agree with the Date Certificate Issued.

[b X] Relieve the holder of all disabilities and bars to employment, excluding the right to be eligible for public office.

[c] Relieve the holder of the forfeitures, disabilities or bars hereinafter enumerated _____

_____

_____

12. [X] This certificate shall be considered permanent.

[ ] This certificate shall be considered temporary until _____. After this date, unless revoked earlier by the issuing court or parole board, this certificate shall be considered permanent. A person who knowingly uses or attempts to use a revoked certificate in order to obtain or exercise any right or privilege that he would not be entitled to obtain or to exercise without valid certificate shall be guilty of a misdemeanor.

13. Signature of issuing official(s)	Print or type name(s)	14. Title(s)
A. Nolia	Aloysius Nolia	Justice Supreme Court State of New York

Complete the following for N.Y.S.I.I.S., only if fingerprints are not obtainable

15. Sex	16. Color	17. Height	18. Date of Birth (Month, Day, Year)
[X] Male [ ] Female	W	6 ft. - - In.	JUNE 18, 1937

BEST COPY AVAILABLE

EXCERPTS FROM TRANSCRIPT.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- 75-CR-741

VINCENT DI NAPOLI, :
EDWARD FEDER, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 5, 1976
2:30 o'clock p.m.

B e f o r e :

HONORABLE MARK A. CONSTANTINO, U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript of proceedings had in the above-entitled matter.

Official Court Reporter
U. S. District Court.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: GARY A. WOODFIELD, ESQ.
Assistant U.S. Attorney

MICHAEL COIRO, ESQ.
-and-
PAUL VICTOR, ESQ.
Attorneys for Defendant DiNapoli

MURRAY RICHMAN, ESQ.
Attorney for Defendant Feder

F1PMR1 3R:KG

(the following occurred in the absence of the jury)

THE COURT: All right. Seat the jury, please.

(jury present)

THE COURT: All right. We are about ready now to start the procedings and it will commence in this manner. For those of you who have never sat on a jury before, just to make sure that you don't place this courtroom in the type of jury trial here with what you see on television, and I can warn you now, nothing, nothing will even be recognized as something similar to what you have seen on television.

This case will be tried according to the rules of evidence. It will be tried by the lawyers asking questions and cross examination by the lawyers of the witnesses and it will start by the Government lawyer advising you as to what he intends to prove in reference to the indictment that has been found against these defendants by the Grand Jury, of this District.

After the Government attorney has made his opening statement, the defendants' attorneys may or may not make an opening statement.

There is no requirement under the law that they make an opening statement and that is in view of the fact that a defendant need not prove anything

and can stand mute during the trial if he so desires and need not make any statements.

If they do or they don't, it will be strictly within their own prerogatives. The case will proceed by the witnesses taking the witness stand.

Now, generally speaking, it is quite habitual with persons to turn or look at the person who is speaking. It is quite normal. However, in a courtroom, it is much better that you center your full attraction and attention upon the witness, because as you probably have found out in life, when you look at a person, you can get a feeling out of the answer that they give you, the response, that you get.

Either by the way -- method they use in answering the questions or the motive they may have or some inflection of the voice that you might miss by not looking at the witness.

It may show the interest that the witness may have in the statements and the testimony given and whether or not he is interested directly or indirectly in the outcome of the situation and generally how does it affect you.

So if you try to center your attention upon the witness you will probably be able to weigh the testimony of that witness much more effectively than

you can if you miss something along the line.

Now, the questions asked by the Government lawyers or the defendant lawyers, are never evidence. The answer to the question is evidence. So the idea is to listen to the question and then recollect the answer and weigh it.

That is evidence in the case. That means that even if a question should contain some piece of evidence, it still doesn't make it evidence.

It is what the response to that question is that you are to weigh, as to the credibility of the witness, the factual ability of the witness to tell you what the fact is, rather than what he wants you to believe it is.

There may be times when there might be some objections to some questions and the Court will either sustain or overrule it. Sustain means that the question cannot be asked. Overruled means the question can be asked and can be answered by the witness.

If from time to time I should proceed to the side of the bench which is known as a sidebar, at the request of anyone of the lawyers, or even at my request, it is for some principle of law or some matter of law that must be discussed between the

Court and the attorneys. It has no intention and is done without intention of taking anything away from you.

But there are moments in a trial, and times in a trial when there is something that might be said and it should not be heard by the jury and must be ruled upon by the Court prior to it being stated in the open courtroom for the jury to hear.

You will find that both lawyers will follow the rules of procedure and we will probably have no problems whatsoever. If we have a discussion on the law, you are not to be influenced either by the advocacy of the lawyer in trying to foster his position with the Court because it is the prerogative of every lawyer whether it be the Government lawyer or defendant's lawyer to try his case as he sees fit to do. He does the utmost that he can in behalf of his client and in convincing the jury as to the position he takes and the Judge.

So again, don't be swayed by personalities or by the argument between Court and counsel, which I doubt will take place too frequently in this case because all four lawyers sitting here are very fine gentlemen and try their case as they believe it

should be tried and generally there is very little for the Court to do.

With that, I am going to ask Mr. Woodfield if he would rise and make his opening statement.

MR. WOODFIELD: Ladies and gentlemen of the jury, Judge Costantino, and defense counsel, as you recall, my name is Gary Woodfield and I am an assistant United States attorney and I am presenting this case for the Government.

Also, as you recall, as Judge Costantino stated to you the other day, the indictment in this case charges various individuals with participating in criminal conspiracy to bribe jockeys to fix horse races.

On trial before you today are two of those defendants. Vincent DiNapoli, sitting on your extreme right and Edward Fedder, sitting on your extreme left.

Now, specifically, the Government's proof will show that on approximately October 12, 1970, DiNapoli and one Salvatore Montello and some other individuals, decided to go to the last four days of racing at Pocono Downs in Pennsylvania, the last four days of this meet which was in October of 1970. That's at Pocono Downs out of Wilkesbarre,

Pennsylvania.

There they would bribe certain jockeys that they know they could reach. That is , they know would accept money. They would bribe those jockeys not to finish in the top two places in the seventh and eighth races of the race card for a certain day.

Now, the defendants were going after big money. They were going after and they wanted to win what is termed the Big Exacta. And that is, that in the racing card for that particular day, usually around nine races, the Big Exacta was to pick the top two finishers in the sevent and eighth races.

Now, how were they going to do this ? Well, by knocking out certain jockeys through bribes, knocking them out by -- I mean by that they pay them money not to finish in the top two of those two races, and by checking the charts on the other horses and the odds that those horses were going at.

Then they would buy all the available combinations remaining. That is, all the horses remaining they would buy tickets to cover all the other possible combinations. And of course they would come up winners.

On October 14, 1970, the first day they did this, they had a winning ticket of $28,090.80. On the next day, October 15, their winning ticket

brought them $5,691.80. On the next day, October 16, 1970, their winning ticket broght them a winner of $8,504.20. And on the last night they did this, the fourth night, October 17, 1970, their winning ticket brought them home, $48,536.60

Not bad for an initial outlay of approximately $5,000. Now you may be asking yourselves already, why is this case being tried to you in 1976, when I have alread stated to you that the facts here occurred in 1970.

Well, that is because, and you will hear evidence of this, that this crime went virtually undetected until approximately a year ago.

At that time, one of the participants in this criminal conspiracy, Salvatore Montello, agreed to cooperate with the Government. Now, obviously from my just relating these facts to you, you know that Salvatore Montello is a criminal.

He participated in this criminal scheme. Well, you will hear the testimony of Salvatore Montello and you will learn of this criminal scheme and other crimes that he has participated in.

You will learn that he was virtually a thief, his entire life. You'll learn of prior convictions

he's had. You'll learn that he has gone to jail. And you'll learn approximately a year ago that he began to cooperate with the Government.

You will also learn the benefits he derived for cooperating with the Government. You will learn among other things that he is not being prosecuted in this case, not at all.

Now, two things I want to bring to your attention now to keep in mind as you listen to the evidence in this case and I will deal with these factors more thoroughly in my summations when I come before you at the end of the case but I'd like you to keep a few things in your mind now as you listen to the testimony.

Initially, I want you to keep this fact in mind: Salvatore Montello, to use street terms is a rat. Now, what is a rat? Well, Salvatore Montello is going to testify against his friends, against his fellow co-participants in crime.

Now, there is nothing very nice about that. Salvatore Montello certainly doesn't even enjoy it. I'm quite sure that the defendants--

MR. COIRO: Judge, I'm going to object to this as not being a proper opening.

THE COURT: Yes. Characterization of the witness. It's not necessary at this point.

MR. WOOLFIELD: Nevertheless, remember I'd like to bring to your attention, the various benefits that Mr. Montello derived for making his agreement to cooperate with the Government. And you listen to this throughout the testimony. And you determine whether or not these benefits that he is going to derive would give him a motive to lie to you, because of course that is your function in this case as Judge Costantino has indicated to you on a couple of occasions and I am sure he will again at the conclusion of the case.

You are the finders of fact. You are here to determine who is telling the truth and where the facts lie. Also keep in mind the fact that the type of case this is, that it is basicly a bribery case, where one individual hands money to another individual to carry out a certain illegal act.

Think of how the Government, if you were in the Government's shoes, would prove this case to you. I submit to you that the Government can only prove a case such as this through one of the participants, through one of the individuals who participated in

that scheme to get on this stand and advise you of his participation and the participation of others.

Furthermore, you'll hear testimony, not only from Mr. Montello but also a couple of jockeys that were involved in this scheme and again I want you to keep in mind the fact that these were events which occurred approximately six years ago from now.

I am sure that there will be basic inconsistencies in the stories that these individuals relate to you and I want you to think yourself of what you could remember of events that occurred six years ago.

Consider that in your determination as to who is telling the truth. There may be various inconsistencies in their stories but I submit to you that at the end of the case, their stories, if you use your common sense you will realize that certain facts that they relate to you may be incorrect but, nevertheless, there is a basic course of evidence that is being introduced to you that indicates that these two defendants with others participated in this scheme.

I'd like you to keep an open mind throughout this trial, listen to all the Government's witnesses

listen to all the evidence that is introduced to you and at the conclusion of the case, I will come before you and request that you find these two defendants guilty of participating in this criminal scheme to bribe jockeys to fix horse races.

Thank you very much.

MR. COIRO: May I Judge?

THE COURT: Yes, Mr. Coiro.

MR. COIRO: Judge Costantino, Mr. Victor, Murray, two defendants, Mr. Woodfield, Madame Forelady, ladies and gentlemen of the jury, my name is Michael Coiro and together with Mr. Victor, we represent Mr. Vincent DiNapoli.

As His Honor stated to you, I don't have to open. I can sit back in that chair, not say one word. Neither does Mr. Victor or the other defendant or Mr. DiNapoli. Not say one word.

But if I were to ask you all to raise your hands right now, after hearing Mr. Woodfield's opening, you'd all raise your hands and say,guilty. You only heard one side. Mr. Woodfield's statement and that is not evidence. What I say to you is not evidence. As His Honor told you, each and every witness that takes the stand -- I'm going to prove

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

:

-against- 75-CR-741

:

VINCENT DI NAPOLI,
EDWARD FEDER, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 6, 1976
11:00 o'clock A.M.

B e f o r e :

HONORABLE MARK A. CONSTANTINO, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: GARY A. WOODFIELD, ESQ.
Assistant U.S. Attorney

MICHAEL COIRO, ESQ.
-and-
PAUL VICTOR, ESQ.
Attorneys for Defendant DiNapoli

MURRAY RICHMAN, ESQ.
Attorney for Defendant Feder

(The following occurred in the absence of the jury)

THE COURT: All right. Bring the jury in, please.

T 1 am
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GR/bw4

(Jury present)

THE COURT: Good morning. We are ready now, to start at this time. The Government will produce its first witness in this case.

MR. WOODFIELD: Your Honor, the Government calls Salvatore Montello.

THE CLERK: Step up, please, and raise your right hand, please.

S A L V A T O R E M O N T E L L O, called as a witness having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. WOODFIELD:

THE COURT: All right, Mr. Woodfield. Do you think you'll be able to speak loud enough? If not -- put the microphone on. You need not talk directly into it, your voice will carry.

All right.

Q Mr. Montello, are you known by any nicknames?

A Yes, sir.

Q What is that?

A Sonny Black.

MR. RICHMAN: I can't hear.

THE COURT: Now, tell.

A Sonny Black.

Q How old are you?

A 46.

Q And what education have you had, Mr. Montello?

A About the 10th grade.

Q And what did you do when you quit school after the 10th grade?

A I was in the produce business.

MR. RICHMAN: I'm sorry?

A I was in the produce business.

Q Fruits and vegetables?

A Yes, sir.

Q Where was that?

A In Brooklyn.

Q And how long did you do that?

A A few years.

Q After that, after a few years in the produce business, what, if anything, did you do to support yourself?

A Start stealing.

Q And what type of crimes did you commit?

A Burglaries, hijacking, race fixing, gambling.

Q When you say hijacking, what do you mean?

A Hijacking trucks.

Q Stealing trucks?

A Yes, sir.

Q How long would you say you've done that, Mr. Montello?

A About 20 years.

Q Did you do that with other people?

A Yes, sir.

Q Mr. Montello, have you ever been convicted of a crime?

A Yes, sir.

Q When was the first time you were convicted of a crime?

A In the '60's, sometime.

Q And what was that?

A Attempted burglary.

Q Attempted burglary?

A Yes, sir.

Q And what did you do?

A Attempt to burglarize a night club.

Q Where was that?

A Queens Boulevard, Pep McGuire's.

Q And did you go to trial on that case?

A Yes, sir.

Q Convicted after a trial?

A Yes, sir.

Q Were you sentenced?

A Yes, sir.

Q What kind of sentence did you receive?

A Two and a half to five years.

Q How much of that sentence did you serve?

A 17 months.

Q Were you paroled after that?

A No, it was reversed from the Court of Appeals.

Q Did you subsequently plead?

A Yes, to a misdemeanor time served.

Q Now, after that conviction, were you convicted of any other crimes, Mr. Montello?

A Yes, sir.

Q And what was that conviction?

A Burglary.

Q And do you recall when that was?

A Sometime in '74, I believe.

MR. RICHMAN: Your Honor, I have difficulty hearing.

THE COURT: You're mumbling, even with the mike on --

A '74.

Q 1974?

A Yes, sir.

Q Was that a conviction after a trial?

A Yes, sir.

Q In fact, that was in this Courthouse, was it not?

A Yes, sir.

Q Were you sentenced?

A Yes, sir.

Q And what sentence did you receive?

A Seven and a half years.

Q Now -- and you started to serve that sentence, did you not, Mr. Montello?

A Yes, sir.

Q And where did you start to serve that sentence?

A Lewisburg Prison.

Q After you served there about nine months,

were you allowed to visit your daughter?

A Yes, sir.

Q And could you tell us the circumstances surrounding that?

A She had attempted suicide. When I went there, my wife was telling me about having no money, being broke, nobody was helping them and at that time, I just didn't realize what I was doing. I just took off.

Q You were escorted to your home from the prison by authorities?

A Yes, sir.

Q And you fled from those authorities?

A Yes, sir.

Q How long were you in hiding?

A About three and a half months.

Q And were you subsequently caught?

A Yes, sir.

Q And where did you go then?

A M.C.C..

Q The --

A -- the Old West Street.

Q What is

A Federal house of detention.

Q Approximately when was this, Mr. Montello?

A April 12th.

Q Of what year?

A Of '75, I believe.

Q Now, what happened while you were at West Street?

A The tried to kill me.

MR. COIRO: Objected to. Move the answer be stricken, if your Honor pleases?

THE COURT: Yes, strike the answer at this point. Go ahead.

MR. COIRO: Not only that, but I also move for a mistrial and withdrawal of a jury.

THE COURT: That motion is denied. Continue, please.

Q Did there come a time, Mr. Montello, that you came to the offices of the U.S. Attorney from West Street?

A Yes, sir.

Q Were you brought here by guards?

A Yes, sir, martials.

Q While you were in the U.S. Attorney's office in this building, did you agree to cooperate with the government?

A On account of what happened to me in West Street.

MR. RICHMAN: Judge, I object to it.

THE COURT: Yes.

MR. RICHMAN: And again move for a mistrial and withdrawal of a jury. He's doing it deliberately.

MR. VICTOR: Your Honor, may we approach the bench on this? This is an extremely important issue.

THE COURT: Yes. Let's have a side bar.

(Side bar follows)

MR. VICTOR: Your Honor, this is a deliberate, calculated move by the Government and this witness and we know because of the testimony that was elicited on the former trial, where the exact same thing occurred.

There was an admonition by the Court, not to do it and the witness and the Government repeatedly sought to elicit this.

THE COURT: Let me hear the question that was asked.

(Read)

THE COURT: That is not responsive.

MR. COIRO: He throws it in deliberately.

MR. WOODFIELD: I'm not going -- Victor, I can give you the page numbers, questions and answers on the last trial where the same --

THE COURT: Let's not get excited. Victor, there were rulings by the Court and there is a calculated risk. At the very least, we need a mistrial. I'll deny it at this point, but I will straighten it out.

(In open Court)

THE COURT: All right, Mr. Montello, the questions are being asked by the Government's attorney, Mr. Woodfield. You are to answer the questions and respond to the questions and not to make an unresponsive answer. In other words, ones that do not answer the question that has been asked of you. You are not to volunteer any information as a witness.

THE WITNESS: Yes, sir.

THE COURT: All right. If you don't understand the question and the manner in which it is phrased you have a right to say, I do not understand it, would you please rephrase it and then the Government's attorney will rephrase

it for you. The Court will ask him to do so. If you cannot answer him a question, you say I cannot answer that question. If you can answer a question, you may answer it yes or no, unless the question asks for a direct colloquy type of answer and you will then make a statement.

You must follow those rules. In order for this Court to conduct this trial properly, it is up to the witnesses to listen to what the Court has stated in reference to the manner in which they have a right to answer questions and you must follow those rules. you cannot cause any problems by answering a question which you are trying to add anything into that question. The last question was rather simple. It merely asked you whether or not you had agreed to co-operate with the government and the answer to that is obviously yes or not.

THE WITNESS: Yes, sir.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. WOODFIELD (Cont'd):

Q You did agree, is that correct, Mr. Montello?

A Yes, sir.

Q What did that agreement entail?

A Immunity for my cooperation.

Q And what was that cooperation on your part?

A On everything I've ever done.

Q Concerning crimes?

A Yes, sir.

(Continued next page)

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GR:KG

Montello-direct

Q You were going to relate that to agents and Government officials?

A Yes, sir.

Q Did it involve your testifying in Court?

A Yes, sir.

Q Mr. Montello, do you know the defendant Vincent DiNapoli?

A Yes, sir.

Q Would you point him out please?

A The blue suit on.

MR. WOODFIELD: Mr. Coiro, is there any --

THE COURT: All right.

MR. COIRO: Identifying Mr. DiNapoli.

THE COURT: All right.

Q And do you know the defendant Edward Feder?

A On the end. Tan suit on.

Q The individual standing?

MR. RICHMAN: Well stipulate.

THE COURT: All right.

Q Now, Mr. Montello, how long have you known Vincent DiNapoli?

A Fifteen, twenty years.

Q And where do you know him from?

A From the Bronx.

Q And do you socialize with him?

A Occasionally.

Q Socialize with his family?

A Yes, sir.

Q In the Bronx?

A Yes, sir.

Q What about the defendant, Edward Feder, approximately how long do you think you have known him?

A Seven, eight years.

Q And where did you meet him?

A Through Vinnie DiNapoli.

Q Did you see him on occasion?

A Yes, sir.

Q Now, Mr. Montello, I want to direct your attention to sometime in the middle of October of 1970, and ask you whether or not you recall receiving a telephone call from an individual by the name of --

MR. VICTOR: I object to any leading questions now. We are far enough into the preliminaries.

THE COURT: At this time there is a foundation question. I will allow it.

Q Mr. Montello, I want to direct your attention to the middle of October 1970, and ask you if you recall receiving a telephone call from an individual by the name

of James Davis?

A Yes, sir.

Q And who is James Davis?

A A jockey.

Q And how long have you known him prior to this?

A Seven, eight months.

Q And where did you meet him?

A Pocono Downs.

Q And what is Pocono Downs?

A A race track.

Q Where is that located?

A Wilkes-Barre, Pennsylvania.

Q And who introduced you to James Davis?

A Another jockey by the name of Louis Comi.

Q And did you have any conversation with Davis at this time?

A Yes I did.

Q What was that conversation?

A He asked me if I wanted to come down to fix some race.

Q This is the telephone conversation?

A Yes.

Q Prior to that telephone call, had you had any conversation where you had met him previously?

A Yes, sir.

Q What was that?

A About fixing races also.

Q What did he say?

A That he was interested.

Q Did you strike an agreement at that time?

A Yes. That we would get together some day.

Q And that someday came in a telephone call in October?

A Yes, sir.

Q And what was the substance of the conversation, Mr. Montello?

A That if I would come down to fix races for the last four days, for the last four nights they wanted to do business.

Q What do you mean when you say the last four nights?

A The last four nights of the meet. It was closing up.

Q For the season?

A For the season, right.

Q And what did you say in response to Mr. Davis?

A I says I was interested.

Q Where did he call you from, do you know?

A He called me from Pocono.

Q And where were you?

A At my house in Bay Shore.

Q What did you do after you had this telephone call about Jimmy Davis?

A Got in touch with Vinnie DiNapoli.

Q How did you get in touch with him?

A By telephone.

Q Did you speak to him?

A I spoke to his mother-in-law.

Q After that, did you have occasion to speak to him?

A Yes, sir.

Q Did he call you?

A Yes, sir.

Q And what conversation if any did you have with Vincent DiNapoli?

A I explained to him what we could do.

Q And what was that?

A About fixing races, if he was interested.

Q And what was his response?

A He was interested.

Q Did you have any conversation concerning money at this time?

A Yes. I told him we needed five thousand.

Q What was his response to that?

A He said at the time he couldn't get it but he would get it.

Q Now, did you have occasion to see Mr. DiNapoli on the next day?

A Yes, I did.

Q And where was that?

A At my house.

Q Did he come to your house?

A Yes, sir.

Q Was anyone else there at that time?

A Jimmy Santamaria.

Q Who is Jimmy Santamaria?

A Another friend.

Q How long had you known him?

A Seven, eight years.

Q Committed crimes with him?

A Yes.

Q What occurred at your house on that day?

A We were -- discussed that I was going to go to Pocono and get together with Davis and fix races.

Q Was there any conversation regarding money at that time?

A Yes, sir.

MR. VICTOR: I object. This is leading and it is the heart of the situation.

MR. WOODFIELD: It is not a leading question, Your Honor.

MR. VICTOR: He asked what did he say and when he doesn't get a response he says did you have a conversation about XYZ. That is leading, classical leading.

MR. WOODFIELD: It is not, Your Honor.

THE COURT: No need to argue. I'll make my rulings. I suggest that you at this point now, since you are getting down to the issue itself, that you permit him to answer without leading him at this time.

Q What if anything else occurred on this day at your house with Vincent DiNapoli, Jimmy Santamaria and yourself?

A He gave me four thousand.

Q Who did?

A Vinnie DiNapoli.

Q Was there any discussion about that?

A Yes. He says he'd meet me and bring me the other thousand.

Q Was there any discussion about who would go to Pocono Downs?

A Myself, Jimmy Santamaria, Vinnie DiNapoli and whoever he wanted to bring.

MR. RICHMAN: Excuse me.

THE COURT: You have to -- I'm sure you could speak better than that. Speak into it if you want to but don't speak with your mouth closed. Open it.

A Whoever he wanted to bring.

Q Was there discussion about numbers of people?

MR. VICTOR: Objection. Leading. He's asking what the discussions are and he's going into a subject and he's categorizing it.

THE COURT: That's not a leading question. I'll allow it. Go ahead.

Q Was there any conversation about people who would go down?

A No, not really.

Q Now, did you have occasion to go to Pocono Downs?

A Yes, I did.

Q And when was that?

A The following day.

THE COURT: I just want to get one position

settled here since we have three attorneys and I cant expect all three of you to jump up and start making objections on different grounds, so at this time I'd like to know whether or not if one attorney makes an objection, do all of you agree with that objection and the Court's ruling?

MR. VICTOR: Yes, Your Honor.

THE COURT: Okay.

Q How did you get there, to Pocono Downs?

A I drove there.

Q You have a car?

A Yes, sir.

Q Anyone with you?

A Jimmy Santa Maria

Q Where did you go when you arrived there?

A Went to the Holiday Inn, in Wilkes-Barre.

Q Did you check into the hotel?

A Yes, sir.

Q What did you do after you arrived?

A Got in touch with Jimmy Davis at the Host Inn.

Q At where?

A At the Host.

Q What's that?

A It's a nightclub and a hotel.

10

Montello-direct

Q Was he staying there?

A Yes, sir.

Q Did you have occasion to see Davis after that?

A Yes I did.

Q Where was that?

A At the Holiday Inn.

Q In your room there?

A Yes, sir.

Q Who was present at that time?

A Donald Laucirica, Clinton Fromel.

Q And was James Davis there also?

A Yes.

Q And where was this again?

A In the Holiday Inn in my room.

Q What occurred there?

A He brought me the program and the telegraph. And he told me --

Q You mean, -- will you tell the ladies and gentlemen of the jury what a program is?

A A program with all -- all horses on it.

Q What do they represent?

A The program, you know, with horses on it and jockeys that are riding them and the odds.

Q What races would those be?

A The seventh and eighth races.

Q Was that the days program for the night at Pocono Downs?

A Yes, sir.

Q Who brought that to you?

A Jimmy Davis.

Q You referred to something else, a telegraph. Would you tell us what that is?

A A telegraph to show you how horses run. The last performance.

Q What conversation did you have at the hotel room?

A Told Jimmy that we would fix the seventh and eighth races that night.

Q What is that called?

A Big E.

Q The E stands for exacta?

A Big Exacta.

Q Could you tell the ladies and gentlemen of the jury what it is to win the Big E, what do you have to do?

A You have to have a horse in first and second to run 1,2 in the seventh. You have running 1, 2 in the eighth.

Q You have to pick both first and second in the seventh and eighth?

A Yes, sir.

Q What conversation did you have with Davis concerning this?

A He told me that he was riding the favorite and Laucirica was riding a favorite and Fromel. That they were going to hold them.

Q What do you mean when you say ride a favorite?

A A figure horse.

Q What does that mean?

A A horse that's -- you know people are betting It could be one to one, two to one, three to one, four to one.

Q The odds were that those horses would win?

A Yes.

Q They told you they were riding short horses? That means horses that would win or supposed to win?

A Yes.

Q What conversation did you have about them riding their horses?

A They would hold them.

Q And what does that mean?

A Not to make them get in the money. Either

13

Montello-direct

first or second.

Q Now, what if anything did you give them in return for that?

A I paid them that night.

Q How much was that?

A I gave them I think five hundred or three hundred apiece. To hold their horses.

Q You paid them the money in the hotel room?

A Yes, sir.

MR. VICTOR: Your Honor, I must. I may have to keep --

MR. WOODFIELD: I'm trying to move it along, Your Honor.

THE COURT: No. It isn't a question of leading, but I think it would be better if we get statements from him rather than adding on question after question. All right.

Q Where did you get that money from?

A From Vincent DiNapoli.

Q Was he present at that time?

A No, sir.

Q Did you have occasion to go to the track that night?

A Yes, sir.

14

Q Did you observe the race?

A Yes, sir.

Q Did you have occasion to win that evening?

A Yes, sir.

Q How much did you win?

A twenty-eight thousand.

Q Now, could you tell us who bought the tickets for the race that evening?

A We all bought them.

Q All being whom?

A Me, myself and Jimmy.

Q Jimmy Santa Maria?

A Yes.

Q And who else?

A Myself and Jimmy that night.

Q At that time was Vicent DiNapoli there?

A He showed up later.

Q When later?

A As the races were going.

Q At the track you met him?

A Yes, sir.

(cont'd on next page)

BY MR. WOODFIELD:

Q Could you explain to the jury how you would purchase these tickets?

A We'd go to the window and buy how many combinations you would need with the live horse. You have enough to go into the B race with the other live horse.

Q Well, you say live horse? What do you mean?

A The horse that wasn't dead.

Q And what are you -- do you refer as a dead horse?

A A horse that the jockey wasn't paid to hold.

Q On that first night of the rase, how many jockeys had you bribed to hold horses, do you recall?

A Laucirica, Fromel, Davis, maybe somebody else there. Davis might have paid.

Q How many horses would run in a raise normally?

A After you stopped them?

Q All told?

A All told, it could be eight, nine, ten.

Q So could you explain to us the tickets you would purchase with regard to those horses?

A After you would stop some horses, you would need less tickets. You would pick a win with all the live horses so you would have enough tickets to go into the other

race with the other live horses.

Q Did you cover all the combinations available?

A Every one.

Q Approximately how much money would that cost?

A It varies. Sometimes it cost you 600, it cost you a thousand. It varied how many horses were alive.

Q How much did you win that night?

A 28,000.

Q How many tickets was that?

A One ticket.

Q Do you know how many winning tickets there were that night?

A One ticket.

Q Who cashed that ticket?

A Vinny's father.

Q Vinny being Vincent DiNapoli?

A Yes, sir. He knew nothing about it.

Q He was down there?

A But he didn't know what was going on. His father

Q Did you see him at the racetrack?

A Yes.

Q Whom did he come with, do you recall?

A He came with Vinny and Vinny's cousin, I believe.

I'm not sure.

Q Did you have any conversation at all with Mr. DiNapoli concerning the cashing of the tickets?

A Yes sir.

Q What was that conversation?

A We had nobody to cash it that night.

Q What do you mean when you say you had no one to cash it?

A Because Eddie Feder was supposed to show up that night and he didn't.

Q Who told you that?

A Vinny.

Q When had you discussed that?

A We had discussed it first at my house who is going to cash these tickets. We agreed that Eddie Feder would meet us there.

Q Who agreed?

A Vinny.

Q He wasn't there the first night?

A No, sir.

Q Did you talk about this with Mr. DiNapoli at all, Vincent DiNapoli?

A Yes sir.

Q And what did he say, if anything?

A He says we'll make my father cash them.

Q And did he in fact cash it?

A Yes, sir.

Q What did you do with that money?

A We took 4,000 apiece. I took 4,000. Jimmy took 3,000. He took 3,000.

Q Well, Jimmy being Jimmy Santa Maria?

A Right.

Q And who else?

A And Vinny DiNapoli. And myself.

Q And what did you do with that money?

A We sent it to the Bronx for my wife to pick up.

Q Who took it there?

A Vinny's cousin.

Q Did you have occasion to see the jockeys later that night?

A Yes, sir.

Q And what happened then?

A We gave them 500 apiece estra.

Q And who was that, do you recall?

A Fromel, Lavcirica and Davis.

MR. WOODFIELD: May I have this marked, please?

THE CLERK: Book marked Government's Exhibit 1 for identification.

(So marked.)

MR. WOODFIELD: I think we'll enter into a stipulation that this book represents the official results of races in the year 1970 and the pertinent pages here regarding these races. The Government would request -- now offer into evidence. Any objection.

MR. COIRO: No objection.

THE COURT: All right. Mark it in evidence.

THE CLERK: So marked Government's Exhibit 1 marked in evidence.

(So marked.)

THE COURT: Will you put in photostats?

MR. WOODFIELD: Yes.

THE COURT: At that time we'll substitute the photostated pages for the book.

MR. WOODFIELD: Your Honor, I'm now giving defense counsel and Mr. Montello and I'd like to hand copies to the jury pertinent portions of Exhibit Number 1 that have been xeroxed. Distribute these to the jury, please.

(Handing exhibit to forelady.)

MR. WOODFIELD: Are there enough there for you?

THE COURT: All right.

MR. WOODFIELD: Do you have extra? There should be twelve.

JUROR NO. 9: There are fourteen.

THE COURT: There are fourteen.

BY MR. WOODFIELD:

Q Now, Mr. Montello, you have in front of you various xeroxed pages from Exhibit No. 1. You know what these are, don't you, sir?

A Yes.

Q Basically, what are they?

A Forms from the racetrack.

Q They give the rusults of the races?

A Yes, sir.

Q Now, on these pages, Mr. Montello, the bottom there are numbers in parenthesis. Please turn to page 3.

A Yes.

Q Mr. Montello, you indicated before that the big Exacta involved the 7th and 8th race on the card for an evening, is that correct?

A Yes sir.

Q The bottom of page 3, do you see where it indicates 7th race?

A Yes, sir.

Q Now, could you explain to the jury what this

chart represents? For instance, in this column where it has a name horse and then horse underneath it. Are those the horses that ran in the race?

A Yes, sir.

Q And this continues on to page 4, is that correct?

A Yes, sir.

Q A little further over it indicated jockey. Are those the jockeys that rode in these races?

A Yes, sir.

Q And further over it has odds and then $1. Would you explain to the jury what that represents?

A Well, the seventh race is a dollar and a half to a dollar. That would be 3 to 2. Pay $5 if he won.

MR. RICHMAN: I'm sorry. I don't know anything about betting and with him telling, I don't know nothing about anything. I can't even hear him, your Honor.

THE COURT: That's a different objection than the rest of it.

MR. RICHMAN: It's the same thing.

THE COURT: All right.

A This is a dollar and a half to a dollar. This is 3 to 2. He would pay $5.

Q You're talking about Belmonts Halo?

A Yes, sir.

Q For instance?

A Yes.

Q Would that be considered a short race?

A Yes, sir.

Q And what does that mean again?

A He's a favorite.

Q Excuse me?

A He's the favorite.

Q And for instance, the second horse is Country Style and his odds are 19.40. What did that mean?

A He paid $40.80.

Q If he had won?

A Right.

Q Would he be considered a short race horse?

A No. A long shot.

Q Now, with regard to that 7th race, the bottom of page 3 and the top of page 4, could you please go through the jockeys and indicate to the jury which jockeys were taken care of as you indicated for these races?

A Jimmy Davis was on the 5 to 1 shot. He was dead.

Q Where is that?

A The 7th race.

Q And at the top of page 4?

A Yes. Speed Command.

Q What other jockeys?

A Donald Lavcirica. He was on a 3 to 1 shot. Big Buy.

Q Any other jockeys?

A Holy was dead. He ran third. He was 4 to 1 shot.

Q Where is he? On this chart?

A He's third.

Q On page 3.

A Yes.

Q Mr. Montello, is there any particular reason that you would want to stop horses that were short horses? That is, with low odds?

A To make a bigger Exacta. People usually --

Q Excuse me.

A Make a big Exacta because the people use the favorites for them.

Q Now, with regard to the next race, Mr. Montello, the 8th race, would you go through and tell us what jockeys you have bribed in that race?

A Donald Lavcirica. He was riding a 3 to 1 shot.

Q And you indicated you could determine that from this $3 at the end of that chart?

A Yes, sir.

Q What other driver?

A Clinton Fromel.

Q He was riding a short horse also?

A $1.70 to $1.

Q Any other riders?

A Jimmy Davis.

Q Could you tell the jury where on this chart it indicates who actually one these races? The order of finish?

A The top horse. They win.

Q Where is that located on these charts?

A On the top of the chart.

Q Is it next to the $2 mutual price?

A It's got no mutual price here.

Q Let's look at the top of page 4. In the middle of that chart indicates Belmonts Halo, Country Style and Glittering Gem, is that correct? Do you see that?

A Excuse me.

Q On the top of page 4 after the 7th race, it indicates Belmonts Halo, Country Style and Glittering Gem written in the middle of that top portion. Do you see that?

A No, not really.

Q Top of page 4? The 7th race, Mr. Montello?

A Speed Command, Chime Song, Big Buy, 8-W.

Q A little further down, next to the second mutual prices. You see that?

I'll indicate it to him, your Honor. It will save some time.

A Oh.

Q What does that indicate?

A That's what the horse paid for second.

Q Does that indicate the results?

A Yes, sir.

Q So who won that seventh race?

A Belmonts Halo.

Q Who finished second?

A Country Style.

Q With regard to the eighth race, who won that race?

A Shy Ruler.

Q And who finished second?

A Mia Vita.

Q Does it indicate on here the moneys that were won on the big Exacta?

A Yes, sir.

Q And where is that?

A Down beneath the eighth race were it says Big Exacta.

Q And the dollar figure of $26,090.80, does that indicate your winning ticket?

A Yes, sir.

Q What is the Big Exacta pool dollar figure next t o that, what does that represent?

A 33,000?

Q Yes.

A 28,000, tax taken off, down to 28,000.

Q Does it indicate tnere was only one winning ticket?

A Yes, sir.

(Continued next page.)

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Q Now, putting this down for a second, Mr. Montello, after you went back to your hotel room, did you have occasion to see the jockeys then?

A Yes.

Q What if anything happened then?

A Well, what happened was the way things went.

Q Excuse me?

A What happened was the way things went as to the money.

Q Did money change hands?

A I gave them another $500 apiece.

Q And who was that?

A Laucirrica, Framal and Davis.

Q Let's go to the next day. The next day did you have occasion to see Mr. Davis again?

A Yes.

Q And where was that?

A At the Holiday Inn.

Q Where in the Holiday Inn?

A In Wilkes-Barre.

Q In your room?

A In my room.

Q And who was present?

A Myself, Jimmy Santamaria and Vinny Di Napoli.

Q And what was the conversation, if any, you had with Jimmy Davis?

A About fixing the Exacta for that night again.

Q Did you have anything with you to look at the race results?

A Yes, sir.

Q And what was that?

A The program and the Telegraph.

Q And who went over that?

A I went over it with Jimmy Davis.

Q Where was Mr. DiNapoli then?

A In the room with us.

Q How close?

A Sittin' on the bed.

Q Where were you?

A Sittin' on the bed.

Q Where was Mr. Davis?

A Sittin' on the bed.

Q Did you reach an agreement with Mr. Davis with regard to that evening's races?

A Yes.

Q And what was that?

A To try to hold what we can.

Q And did you give any money to Mr. Davis at this

time?

A Yes, sir.

Q Approximately how much, do you recall?

A I think five hundred again.

Q Now, do you recall if any other jockeys were present at this time?

A Robert Wholey was there.

MR. VICTOR: Your Honor, I am not sure where this last jockey was.

Robert Wholey was where?

THE WITNESS: He was in the room with us.

Q Now, did you go to the race track that night?

A Yes, sir.

Q And who went with you?

A Myself, Jimmy Santa Maria, Vinny DiNapoli, his father and his cousin.

Q Was Mr. Feder there at all?

MR. RICHMAN: Objection as leading.

MR. WOODFIELD: I just asked him whether or not he was there --

THE COURT: Overruled.

Q Was he present then?

A Yes, sir.

Q When is the first time you had seen him?

A That afternoon.

Q That's the second day?

A Yes, sir.

Q Where did you see him?

A At the Holiday Inn.

Q Did you talk to him at all?

A Yes, sir.

Q What did you say to him?

A Was he going to cash the tickets that night.

And he said, "Yeah,"

I asked him if he had different identification.

He said, "No."

Q He had what?

A Did he have different identification.

He said, "No."

Q What do you mean when you say different identification?

A Phony I.D.

Q Had that previously been discussed at all with anyone?

A Yes, sir.

Q With whom?

A Mr. DiNapoli.

Q You and Mr. DiNapoli?

A Yes, sir.

Q What did you discuss?

A About cashing these tickets that we needed phony identifications.

Q What did Mr. DiNapoli say?

A He would make arrangements to get it.

Q You went to the track that night, is that correct?

A Yes, sir.

Q And did you win that night?

A Yes, sir.

Q What tickets did you purchase again? Will you explain how you did the ticket purchases, Mr. Montello?

A We all bought different tickets that night not to make it look so obvious, you know, we made our combinations, and certain guys went to certain tickets, and then asked for certain other tickets.

Q Approximately how many tickets generally would have to be bought?

A It varies. It could be a hundred tickets, it could be fifty, it could be thirty, to get out enough to go into the next race.

Q You spread those around?

A Yes, sir.

Q Who bought tickets that night?

A Myself, Vinny DiNapoli, Jimmy Santa Maria.

Q How much were these tickets?

A Two dollar tickets.

Q Did you win that night?

A Yes, sir.

Q Do you recall how much you won?

A It was either five thousand or eight thousand dollars.

Q Let's look at the xerox copies of exhibit number 1 in evidence, Mr. Montello, and turn to page 7.

Again, could you indicate to us in the seventh race what jockeys you had taken care of?

A Davis, Framal and Wholey.

Q Looking at that seventh race, there were horses that were running at short odds, were there not?

A Yes, sir. We couldn't buy that jockey.

Q Did you attempt to?

A Yes.

Q How did you do that?

A Through Davis.

Q What did he say to you?

A He says the jockey wouldn't hold the horse.

Q What about the eighth race that evening? What

jockeys had you taken care of there?

A Davis was on a three-to-one shot. We took care of him. Rossarica was on the $1.70 to a dollar, and we took care of him.

Q And looking at the bottom page 7, does it indicate the winning ticket that evening?

A Yes, sir.

Q How much was that?

A $5961.

Q Did you have such a ticket?

A Yes, sir.

Q And who cashed that ticket?

A Eddie Feder.

Q Did you observe him cash that ticket?

A Yes.

Q Did you have any conversation with him at all concerning the cashing of tickets?

A I said, "Why are you using your right name for?" He says, "Don't worry about it."

Q Now, that evening did you have occasion to meet with the jockeys then?

A Yes, sir.

Q Did you have occasion to give them any money?

A No, not for that one.

Q Why not?

A It came back too short.

Q What does that mean?

A It was small, five thousand and change. There was other people holding -- ticket holders.

Q The wins were not large enough?

A Right.

Q Let's go to the next day, Mr. Montello, Friday, October 16, 1970.

Did you have occasion to meet Mr. Davis that afternoon?

A Yes, sir.

Q Where did you meet him?

A At the Holiday Inn, in my room.

Q Who was present?

A Rossarica and Farmal.

Q Anyone else?

A Vinny DiNapoli. Eddie Feder was in the next room. And his father was in the next room.

Q Did you have adjoining rooms?.

A Yes, sir.

Q Did you have a conversation with Davis at that time?

A Yes, sir.

Q What did you talk about?

A About fixing the Exacta again that night.

Q And where was Mr. Davis located at that time?

A He was staying at the Host.

Q Was Mr. DiNapoli in your room at that time?

A Yes, sir.

Q Where was he?

A The same room with me.

Q While you were talking to Mr. Davis?

A Yes, sir.

Q Where was he standing?

A He was sittin' on the bed again.

Q The same as the day before?

A Yes, sir.

Q What did you talk about with Mr. Davis concerning that race?

A About fixing the Exacta again.

Q Did you reach an agreement with them?

A Yes, sir.

Q Did you go to the track that evening?

A Yes, sir.

Q Did you purchase tickets?

A Yes, sir.

Q And who purchased the tickets?

A All of us again.

Q Meaning whom?

A Myself, Vinny, Jimmy Santa Maria and Eddie Feder.

Q Did you have occasion to win that evening?

A Yes, sir.

Q Looking at exhibit 1 again, Mr. Montello, will you turn to page 10, and looking at the bottom of page 10, the seventh race, will you indicate what drivers you had taken care of that evening?

A I believe it was Sage and Scurrancy. I am not so sure of that.

Q What about Mr. Fromal?

A He wouldn't hold the horse for this man. He was going steady for this man.

Q When did he indicate that to you?

A That day.

Q In the hotel room?

A Yes.

Q Again what did he say to you?

A He said I wouldn't hold the horse for the man, he says, on contract with the man, something to that effect. But he was eight to one, so we let him go.

Q Who was the man? When you refer to the man, who do you mean?

A The trainer.

Q So you didn't have Fromal dead in that case?

A No, sir.

(continued on next page)

Q Now, going from the bottom of page 10 to the top of page 11, were there any further jockeys that you had taken care of that race, do you recall?

A Fromel was dead in that race.

Q Well, are you talking about the Eighth Race?

A Yes, sir. Clint Fromel was dead.

Q Any others?

A No, sir.

Q What about Lavcirica?

A He wouldn't hold the horse for Paul Maxwell.

Q Who is Paul Maxwell?

A Another trainer.

Q Is that Off Color, the name of the horse?

A No, that's the trainer -- yes, the horse was Off Color.

Q Where did Mr. Lavcirica indicate this to you?

A In the room that morning.

Q Now, what was the winning ticket for that night?

A That one there was about $8,000.

Q Who cashed that ticket?

A Eddie Feder.

Q Did you meet the jockeys that evening?

A Yes, sir.

Q Did you have occasion to pay them any money?

A No, not that one.

Q Why not?

A It came back short again.

Q Not enough winnings?

A Right.

Q Now, Mr. Montello, directing your attention to the next day, October 17, 1970, without looking at the chart for a moment, did you have occasion to meet Mr. Davis on that day?

A Yes, sir.

Q Where was that?

A At the Host.

Q And what time was that?

A It was in the morning.

Q Who was present?

A Myself and Jimmy Santa Maria.

Q Anyone else present at that time?

A No, sir.

Q And what was the conversation you had?

A About fixing the Exacta that night. He was supposed to meet me back in the Holiday that afternoon.

Q And did he?

A Yes, sir.

Q And who was present then?

A Myself, Jimmy Santa Maria, Donald Lavcirica, Clint Fromel, Jimmy Davis, Vinnie DiNapoli.

Q Do you recall whether or not Mr. Feder was there?

A He was in the next room.

Q And what was the conversation that you had then?

A About fixing the last one for the last night.

Q That was the last night of this meet?

A Yes, sir.

Q And who did you have that conversation with?

A With Jimmy Davis, and Lavcirica, and Fromel.

Q Did you reach an agreement with them?

A Yes, sir.

Q What was that?

A To stop whatever we can.

There was a discrepancy about getting Richard Serrenci.

Q What do you mean by that?

A We didn't know if he would hold his horse or not.

Q Who told you that?

A Jimmy Davis.

Q Did you give him money at all?

A Well, he went to see Serrenci and he came back

and he told me he would hold him for 500.

Q Davis told you that?

A Yes, sir.

Q Did you give the money?

A Yes.

Q Did you give the other jockeys money?

A Yes, sir.

Q How much money?

A It was 500 apiece, or 300, something like that.

Q Now, at that time was Mr. Fromel in the room?

A Yes, sir.

Q Did you have a conversation with him at all?

A Yes, sir.

Q What was that conversation?

A About holding his horse that night.

Q Did you reach an agreement to do so?

A Yes, sir.

Q Did you have any conversation with him with regard to the Ninth Race that evening?

A Yes. He said he was riding a horse that evening that he liked that he could win with him.

Q This was in the room earlier that day?

A Yes, sir.

Q Did you go to the track that night?

A Yes, sir.

Q Did you buy tickets?

A Yes, sir.

Q Approximately how many tickets would you buy?

A It's hard to tell, you know. It's a steady wheel. You have to just wheel all the horses that are alive with all the horses in the next race that are alive.

Q All the available combinations?

A Every combination.

Q Who bought the tickets that evening?

A All of us again.

Q Did you win that evening?

A Yes, sir.

Q How much did you win? Do you recall?

A $48,000.

Q Now, Mr. Montello, turn to page 14, the Xerox pages of Government's Exhibit No. 1 in Evidence, and could you indicate to us what jockeys you had taken care of in the Seventh Race?

A Lavcirica was dead.

Fromel was dead.

Davis was dead.

Sage was dead.

Q And with regard to the Eighth Race?

A Lavcirica was dead.

Fromel was dead.

Davis was dead.

Serrenci was dead.

I believe Lukas was dead.

Q You believe who?

A I believe Lukas was dead.

Q You didn't meet with all these jockeys, did you?

A No, sir.

Q How were the arrangements made?

A Through Jimmy Davis.

Q How did you do that?

A I went to speak to him and asked them what they wanted. I would give him the money and he would go give it to them.

Q You never met with some of these jockeys, is that right?

A No, sir.

Q Now, again, your winning ticket was indicated at the end of the Eighth Race, is that correct?

A Yes, sir.

Q Would that also indicate you had the only winning ticket that evening?

A Yes, sir.

Q Who cashed the ticket that night?

A Eddie Feder.

Q Did you observe him cash the ticket?

A Yes, sir.

Q And who was present at the track that time?

A All of us.

Q Was DiNapoli there?

A Yes, sir.

Q Now, did you have a conversation with these gentlemen as to what to do after the ticket was cashed?

A I told them to go back to the Holiday Inn.

Q Who did you tell that to?

A To Eddie Feder.

Q Did you observe him leave?

A I observed him leave with two Pinkertons, I gave him a hundred dollars apiece to take them to the Holiday Inn.

Q Who were these Pinkertons?

A Pinkertons that worked at the racetrack.

Q Security personnel?

A Yes, sir.

Q Did you stay around for the Ninth Race?

A Yes.

Q Did you purchase any tickets?

A Yes, sir.

Q How much did you purchase, do you recall?

A Yes, $200 worth of the Exacta plus 200 to win on the winner.

Q What's the Exacta?

A The Exacta in the last race. They got to run one, too.

Q Just in that one race, the Ninth Race?

A Yes, sir.

Q Did you purchase those tickets?

A Myself, Jimmy and Vinnie's father.

Q And who won that race?

A Fromel.

Q Did he indicate that to you earlier that day?

A Yes, sir.

Q How much did you win?

A For that $200 worth of Exacta it came to $11,000 and change. Plus 200 to win on the winner.

Q And who had bought the tickets?

A Myself, Jimmy and his father.

Q You had more than one ticket?

A Yes, sir.

Q Now, where did you go after you left the track that night?

A We went to Eddie Feder's room.

Q Where was that?

A In the hotel.

Q The same hotel?

A Different hotel.

Q Where was that located?

A Maybe a mile away.

Q And who was there?

A Myself, Jimmy Santa Maria, Vinnie DiNapoli, Eddie Feder, Vinnie's father, Vinnie's cousin, Donald Lavcirica, Jimmy Davis and Tommy Mader.

Q Who was Tommy Mader?

A Another jockey.

Q A jockey that you knew?

A Yes, sir. And Raymond Parker.

Q Who was he?

A Another jockey.

Q Where was the money at this time?

A On the bed.

Q How was it located on the bed?

A It was just dumped on the bed, you know.

Q Cash?

A Yes, sir.

Q You split the money up?

A Well, they gave the jockeys all a thousand dollars apiece bonus.

Q The jockeys were in the room and you gave how much?

A A thousand dollars apiece to them.

Q What was that for?

A You know, the $48,000 one. We had the whole pie.

Q A bonus?

A Right. We gave Jimmy Davis $2,000.

Q Why was he given more money?

A Because he did most of the business with everybody.

Q What did you do with the remaining money?

A We split it up.

Q Who split it?

A Myself, Vinnie DiNapoli and Jimmy Santa Maria.

Q Evenly?

A Yes, sir.

Q Approximately how much was that?

A We would wind up with about 17- or 18,000 apiece, something like that.

Q Did you give money to anyone else?

A I met Fromel at The Host and I gave him a

thousand.

Q The Host Hotel?

A Yes, the Host Hotel.

Q Where did you give him that?

A Down in the basement in the bathroom. And I gave 500 to a kid by the name of Hoey, and I gave 500 to Sage.

Q Did you give money to anyone else?

A No, sir.

Q Did you have a conversation with Mr. DiNapoli about Feder?

A He says he would take care of Eddie.

Q What do you mean take care of him?

A He would pay him.

Q Do you know whether or not he did?

A No.

Q When did you leave Pocono Downs?

A The same night.

Q You left it at night?

A Yes, sir.

Q Did you have any conversation with anyone about that, about why you left that evening?

A Because I figured it was too hot. I said, "Let's get out of here."

Q Did everyone agree to leave?

A Everybody.

MR. WOODFIELD: Excuse me for just a moment, your Honor.

THE COURT: We'll take a short recess at this point.

(A recess was thereupon taken at 11:50 a.m.)

(Continued on next page.)

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(The following occurred in the absence of the jury.)

THE COURT: All right.

Seat the jury, please.

MR. RICHMAN: Your Honor, may I have a side bar with the United States Attorney and yourself?

THE COURT: Yes.

He wants to talk to you. I don't have to step off for that reason.

Okay. While the jury is coming in, you may confer. Do you want me, too?

Oh, I didn't know I was going to be a party to this one. All right.

(Side bar follows:)

MR. RICHMAN: If the Court pleases, may I inquire of Mr. Woodfield as to whether or not there is any additional Grand Jury testimony concerning Edward Feder?

MR. WOODFIELD: There is.

MR. RICHMAN: Concerning this particular indictment?

MR. WOODFIELD: Yes.

MR. VICTOR: Grand Jury testimony?

MR. WOODIELD: Yes.

MR. RICHMAN: This particular individual?

MR. WOODFIELD: No.

MR. RICHMAN: That occurred on October 7th?

MR. WOODFIELD: I'm not sure.

MR. VICTOR: Grand Jury testimony we haven't received yet?

MR. WOODFIELD: And I don't intend to submit. It's not 3500 material.

MR. RICHMAN: Concerning Mr. Feder?

MR. WOODFIELD: Yes.

MR. RICHMAN: On October 7th?

MR. WOODFIELD: I'm not sure of the date.

MR. RICHMAN: From my recollection of these minutes, I respectfully request that your Honor take an in camera reflection upon these minutes if they are not available to counsel. I would like your Honor to read these minutes with a view towards Mr. Feder's alleged complicity in these acts and determine whether or not an alleged crime is made out whatever in the Grand Jury to -- sufficient enough to form an opinion to indict upon.

THE COURT: Which minutes are you talking about? The ones you have in your hand?

MR. RICHMAN: Yes. And any and all other minutes that the United States Attorney can provide to you which occur prior to the indictment in this

particular case.

MR. WOODFIELD: This testimony -- there is other testimony that was introduced in the Grand Jury for the return of this indictment. I didn't turn it over as 3500 material. There has been no motion to explore the Grand Jury minutes.

THE COURT: It is premature at this time.

MR. RICHMAN: The simple reason, your Honor, this indictment was secured seven days prior --

THE COURT: I know. October 5th. I know all about this case. I've read all the papers. I could sit up there and smile.

MR. RICHMAN: Part of the Grand Jury testimony says the indictment was returned on the 7th of October and then sealed.

THE COURT: Until February?

MR. RICHMAN: Correct.

THE COURT: I know that.

MR. RICHMAN: If the indictment is predicated with relation to Feder upon this testimony, there is no sufficient evidence in here to make out a crime.

MR. WOODFIELD: I think I just stated, I don't know whether you missed my point that there is other Grand Jury testimony.

MR. RICHMAN: I'd like your Honor to have that.

THE COURT: Need not rely on one witness's testimony. There can be a compilation or accumulation of testimony.

MR. RICHMAN: Yes. But my original motion was directed towards the inspection of the Grand Jury minutes which your Honor denied but at this juncture based upon these minutes, which seem to indicate that no crime has been committed by the principal witness here, that your Honor should, on his own motion in camera check these minutes to determine whether or not a -- in fact a crime was in fact committed and brought to the attention of the Grand Jury by Mr. Feder.

THE COURT: On those minutes alone?

MR. RICHMAN: No. Any other minutes he could provide to you to read in camera. Would you tell us looking at it?

MR. VICTOR: Obviously, your Honor --

MR. RICHMAN: You be the judge, obviously.

THE COURT: I hope so.

MR. VICTOR: The chief witness supplied any information as to Mr. Feder was Montello. I can't conceive of any other witness supplying any

evidence to a Grand Jury unless Mr. Woodfield wants to make an offer of proof at this time.

THE COURT: I doubt it.

MR. WOODFIELD: I don't see any basis for it.

THE COURT: I don't think he wants to make an offer of proof.

MR. VICTOR: These minutes are clearly deficient. They don't state a crime against Mr. Feder.

MR. WOODFIELD: There are other minutes.

MR. RICHMAN: I'd like your Honor to take a look.

MR. VICTOR: It's a fair request.

THE COURT: I can be looking up there.

All right.

MR. RICHMAN: Thank you.

THE COURT: All right.

MR. WOODFIELD: Shall I give you -- I'm not sure of them altogether.

THE COURT: Get them. I'll read them while I'm up but I think the position is right.

Okay.

(In open court)

MR. WOODFIELD: Your Honor, I have no further

questions.

Thank you.

MR. RICHMAN: Your Honor, prior to Mr. Coiro's statement, may -- I understand we received 3500 material pursuant to law. May I have that marked and specifically what I made reference to and ask to make it a Court's Exhibit?

THE COURT: All right.

It doesn't have to be.

MR. RICHMAN: Do you have an extra copy, Mr. Woodfield?

MR. WOODFIELD: I'll turn over now, your Honor, all --

MR. RICHMAN: Marked 3501, sir.

MR. WOODFIELD: All the 3500 material and at the Clerk's convenience, have him mark them appropriately.

THE COURT: Yes. And then show them to the Court and I will look at them.

MR. RICHMAN: Will that be marked 3501?

THE COURT: 3501.

MR. RICHMAN: Thank you, sir.

THE COURT: All right.

Ready?

MR. COIRO: Judge Costantino, we handed this

morning all of the 3500 material that Mr. Woodfield just had marked. To be honest with you, Judge, we haven't had an opportunity to read it. I can start with some preliminary questions.

THE COURT: Go ahead.

MR. COIRO: And then -- but I want the right, Judge, to read that material.

THE COURT: I'll give you the right. Let's start with the preliminary questions.

MR. COIRO: Thank you.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. COIRO:

MR. COIRO: I left something at the table, Judge.

THE CLERK: Judge, do you want me to mark each document individually?

THE COURT: It doesn't make any difference. Mark them as they were. Some have been marked already. Just mark that one 3501.

THE CLERK: Okay.

Q Mr. Montello, what years were you in the fruit and produce business?

THE COURT: Take your hand away from your mouth and talk into the mike.

A Maybe in the fifties.

Q Maybe in the fifties? Could you fix the times a little better than maybe in the fifties?

A Not really.

Q Not really?

A No.

Q Well, that was the only legitimate employment you've had, right?

A That's right.

Q And you mean, you -- so involved with crime from the fifties up till 1975, that you can't remember when you were in legitimate business?

A That's right.

Q Fine. How long were you in this legitimate business?

A A few years, I guess.

Q Two years?

A A few years, I guess.

Q What's a few years?

A Maybe three years.

Q Now, all totalled, Mr. Montello, I believe you testified that you were involved in crime for 20 years, is that correct?

A Roughly.

Q Over those 20 years that you were involved in crime, how much money would you say you earned?

A A lot of money.

Q What's a lot of money, Mr. Montello?

A 50,000 a year, 30,000, 100,000.

Q 100,000 a year?

A Maybe.

Q Would you say you roughly earned in the millions?

A Maybe.

Q Right?

A Right.

Q In the millions?

A I made you smile?

Q Now, in all of that time, did you ever go to the authorities and tell them how you were making this illegal money?

A No. You know I didn't.

MR. COIRO: Judge, I'm going to direct --

THE COURT: Answer questions. The answer is no. All right.

The answer is no, is that right?

A Right.

Q You took the money and you spent it?

A Right.

Q You weren't interested in becoming a public spirited citizen then, were you?

A No, sir.

Q You took the money, went out and gambled, right?

A Right.

Q Bought clothing?

A Right.

Q Wined and dined?

A Right.

Q Has a good time with the money?

A Right.

Q Never paid taxes on it?

A No, sir.

Q Spent it, right?

A Right.

Q Life of crime, right?

A Right.

Q Tell me, tell this jury, how many times did you stick a gun in somebody's head or face to make money?

A A few times.

Q What's a few times?

A A few times.

Q Beg your pardon, sir?

A Four, five times.

Q Four, five times. Took truck drivers out of a truck, stuck a gun in their head?

A Yes, sir.

Q Told them you'd blow them to kingdom come if they didn't cooperate?

A I never told them that.

Q You never told them that?

A I was nice with them.

Q You're not a man that's prone to violence?

A I was always nice to them.

Q You don't hit people, do you?

A No, I never.

Q Never hit anybody?

A Once in a while in a fight.

Q In a fight?

A Yes.

Q How many times did you beat your wife?

MR. WOODFIELD: Your Honor, is this really relevant?

MR. COIRO: Oh, it's relevant.

MR. WOODFIELD: I can hear you, Mr. Coiro.

THE COURT: What are you yelling at him?

MR. WOODFIELD: I don't have a hearing problem.

MR. COIRO: Sometimes I think you do.

THE COURT: I'll allow it but don't yell at him.

MR. COIRO: I apologize, Mr. Woodfield, for yelling at you.

BY MR. COIRO:

Q Mr. Montello, how many times did you beat your wife?

A A few times.

Q A few times?

A A lot of people beat their wives.

Q That's a common occurrence, right?

A Right.

Q Isn't it?

A You know that.

Q I know it?

A Sure.

MR. COIRO: Judge, would you please direct him to answer the questions?

THE COURT: Well, I've advised him in the method in which to answer questions. You are not allowed to volunteer or ad lib or question the questioner because you must answer the questions. He need not

answer any questions.

All right?

THE WITNESS: Yes, sir.

THE COURT: So I suggest that you stay with the questions and the answers only.

All right.

BY MR. COIRO:

Q Okay.

Now, you stated that you commited crimes of burglary, is that right?

A Yes, sir.

Q What kind of burglaries? House burglaries?

A No. Banks.

Q Bank burglaries? Never burglarized anything else except a bank?

A Yes. Supermarkets.

Q Supermarkets?

A Department stores.

Q What else, Mr. Montello? Beg your pardon?

A Department stores.

Q Department stores?

A Nightclubs.

Q Nightclubs? What else? Any other kind of burglaries?

14

A Not that I could remember offhand.

Q Not that you can remember?

A I was a burglar. I just burglarized anything.

Q Burglar?

A Right.

Q All right. Now, by the way, you were arrested for an extortion, weren't you?

A Yes, sir.

Q Extortioning money from somebody?

A No, sir.

Q Tell us about this extortion?

A It was nothing to tell about.

Q You were arrested for it, weren't you?

A Yes.

Q What happened to the case?

A Nothing. It was dismissed.

Q They dismissed it?

A Yes. Way before this.

Q Way before this?

A Yes.

Q Now, there came a time in April that you decided to cooperate, is that right?

A Yes, sir.

Q And you were interviewed by some FBI agents,

is that correct?

A Yes, sir.

Q And some United States Attorneys?

A Yes, sir.

Q And you made a clean breast of everything, is that right?

A Yes, sir.

Q And one of the reasons for your cooperation was you wanted immunity, is that right?

A Yes, sir.

Q Immunity from any and all crimes that you had committed?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And as a matter of fact, you got that immunity, didn't you?

A Yes, sir.

Q Because you're not on trial in this case and you're not on trial in other cases, is that right?

A Yes, sir.

Q Now, you stated that after you came out of West Street, that's when you decided to cooperate? That was when, Mr. Montello?

16

A April 25th.

Q Of 1975, correct?

A Yes, sir.

Q That was after -- question withdrawn.

You first went away back in 1960's, is that correct? You went to prison, is that correct?

A Dannemora, my first pinch, right.

Q You went to prison. And while -- after serving some 17 months, you then came back out on -- into society, is that correct?

A Yes, sir.

Q And then you went to prison in connection with a bank burglary in this District, right?

A Yes, sir.

Q And as a matter of fact, one of the defendants in that case was James Santa Maria, right?

A Yes, sir.

Q Your friend?

A Yes, sir.

Q Right?

A Yes.

Q That's the same fellow that you testify committed all of these race fixings with you, is that correct?

A Yes, sir.

gr/ss

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BY MR. COIRO:

Q As a matter of fact, you implicated Santa Maria in a number of truck hijackings, didn't you?

A Yes, sir.

Q And he's your friend, right?

A Yes, sir.

Q But you now are a public spirited citizen?

A I'm trying to be.

Q You're trying to be, right?

A Yes.

Q Now, you went to prison for seven and a half years, is that correct?

A Yes, sir.

Q You made a motion to reduce that sentence, didn't you?

A Yes, sir.

Q And that motion to reduce was denied, wasn't it?

A No, sir.

Q I'm talking about when it first came on before Judge Neaher.

A It was never denied.

Q It was never denied?

A It was a reserved decision.

Q It was a reserved decision and the Governme

vigorously opposed that reduction, didn't they?

A I guess so.

Q You guess so? You know so, don't you?

A I wasn't here.

Q You weren't here, but youf family was present in Court, weren't they?

A But I wasn't here I told you.

Q But you know what the result was, they vigorously opposed it?

A I guess so.

Q And then it's at 'hat time when you were in Lewisburg that your daughter attempted suicide, right?

A Yes, sir.

Q By the way, that's not your natural daughter, is it?

A No, sir.

Q It's your daughter by your second wife, is that right?

A It's her daughter.

Q It's her daughter, right?

A Yes.

Q Because you divorces your first wife, right?

A Right.

Q Now, this girl was where when she attempted

this suicide, were did you go to visit?

A At my sister's house.

Q At your sister's house and you went into visit her and then I believe you told this jury you flipped out, is that right?

A That's right.

Q When you saw her? And you took off?

A Right.

Q Right? And you were gone for three and a half months, right?

A Yes, sir.

Q Were you flipped out all of that three and a half months?

A Yes, sir.

Q Just couldn't put your thoughts together, right?

A No, sir.

Q As a matter of fact, Mr. Montello, a couple of weeks after you left and you abscounded from justice, you took up with another woman, didn't you?

A No, I didn't.

Q Where did you take up with her?

A Many months after.

Q Many months after? But you left your wife and your daughter, that you were so concerned about, didn't you?

A Because she was no good.

Q She was no good?

A No. No good.

Q She's not as good as you are?

A No, she's not as good as you.

Q And she's a tyrant, isn't she?

A She's a pig.

Q She's a pig. What do you consider yourself?

A What? A stool pigeon.

Q A stool pigeon?

A Yes.

Q Now, you took up with this other woman, right?

A Right.

Q And as a matter of fact, you're living with this other woman, is that right?

A Right.

Q And as a matter of fact, when you left your sister's house that day, you used a 17 year old boy to help you escape, didn't you?

A The boy didn't know nothing. I told you.

Q The boy didn't know nothing?

A No, he didn't know nothing.

Q But you used him, right?

A I just told him to drive.

Q You used him?

A The kid didn't know what was happening.

Q You used him?

A The kid didn't know.

Q Did you use him?

A I'm not going to answer it your way.

Q Answer it your way.

A The kid didn't know what was happening.

Q Did you tell him you'd break his head if he didn't help you?

A No.

Q He just politely went along and made himself a party to a crime to help you escape?

A I told him to drive me away and that was it.

Q Because you're the boss?

A You're the boss.

Q You're the boss, right?

A You're the boss.

Q I'm the boss? Now, by the way, you were visited by your ex-wife, this girl you called the pig, is that right?

A Yes, sir.

Q She used to come and visit you in Lewisburg, didn't she?

To torment me for money.

Q She's come and visit you?

A To torment me for money.

Q Did she come and visit you?

A Yes.

Q Did she bring your children at your request?

A No.

Q How many visits a week would you get at Lewisburg?

A One, two, three.

Q A week? Right?

A Yes. What's wrong with that?

Q Known as the man who did his time in the visiting room?

A That's what you say.

Q I'm asking you.

A I got a big family.

Q I'm asking you.

A Nothing wrong.

Q You can deny it.

A If you was in jail, you'd want visitors.

Q You can deny it.

A I couldn't deny the truth, could I?

Q Right. Four, five times a week, is that right?

A No, two, three times.

Q Two, three times?

A I got a big family I told you.

THE COURT: All right. Mr. Witness, I have permitted you now to make some statements and at this point I direct you to answer only the question, absolutely no comments on your answers.

THE WITNESS: Yes, sir.

THE COURT: No comments, no aspersions against the lawyer. Absolutely none. All right. Now we'll continue.

MR. COIRO: Thank you, Judge Costantino.

Q Now, the United States Government was good enough to let you out of jail to visit your daughter, weren't they?

A Yes, sir.

Q In the company of two guards, allowed you to visit this young girl who wasn't feeling well, right?

A Yes, sir.

Q And you repaid this faith in you by running away, right?

A That's right.

Q Now, when you were making your deal with the United States Attorney's Office and the Government, did you

tell them that you wouldn't cooperate unless you got immunity?

A I asked them for immunity.

Q Did you tell them?

A Yes.

Q That unless they gave you immunity, you weren't answering one single question?

A I was cooperating before I even got immunity.

(Continued next page.)

CROSS EXAMINATION

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BY MR. COIRO (Cont'd):

Q You were? Mr. Montello, before you testified in the grand jury, --

A Then I got immunity.

Q Would you please hear my question, sir?

A I'm sorry.

Q Mr. Montello, before you testified in the grand jury, did you tell a U.S. Attorney by the name of Paul Corcoran, that you were going to take the Fifth Amendment unless they gave you immunity?

A No, sir.

Q That never happened?

A No, sir.

Q If Mr. Corcoran put that in an affidavit to get you immunity, would Mr. Corcoran be lying?

A I don't know the procedures, sir.

Q You never told that?

A I don't know the procedure.

Q If Mr. Corcoran said you advised him and Mr. Corcoran -- you know, don't you?

A Yes.

Q He's an Assistant U.S. Attorney. If Mr. Corcoran said that Mr. Montello told me that unless

he got immunity, he was going to take the Fifth Amendment, Mr. Corcoran would be lying?

A I remember saying I wanted to take the immunity, but I don't remember saying the Fifth Amendment.

Q If Mr. Corcoran so testified or Mr. Corcoran so put forth in an affidavit, would he be lying?

A No, sir. Maybe I said it, maybe I didn't. I don't remember saying it.

MR. COIRO: Mr. Woodfield, would you enter into a stipulation with me, sir?

MR. WOODFIELD: I may.

MR. COIRO: Objection.

MR. WOODFIELD: What stipulation would you like? Oh.

MR. COIRO: One signed by Corcoran and one signed by Mr. --

MR. WOODFIELD: Let me see.

MR. COIRO: Judge, may I have this marked as Defendant's -- are you going to consent? I'm going to offer it in evidence.

MR. WOODFIELD: Fine.

THE COURT: Mark it.

MR. WOODFIELD: No objection to its

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introduction.

THE COURT: How about the other defendant?

MR. COIRO: Do you want to take a look at it?

MR. RICHMAN: Yes, I'd like to. I have not objection, your Honor.

THE COURT: All right. Mark it in evidence as a defendant's exhibit.

THE CLERK: Two page document marked Defendant's Exhibit A., in evidence.

(So marked)

MR. COIRO: Now, with your Honor's permission, I'd like to read one paragraph from each of these affidavits to the jury.

THE COURT: Surely.

MR. COIRO: This is an application for immunity for Mr. Salvatore Montello. This affidavit is signed by Paul Corcoran, Assistant U.S. Attorney, referring to paragraph three thereof.

"The witness, Salvatore Montello, has informed my office that absent a grant of immunity, he would invoke the Fifth Amendment as ground for refusing to answer the questions

posed to him by the aforesaid grand jury."

The next affidavit is signed by Mr. Edward R. Corman, who is the Chief Assistant U.S. Attorney.

Paragraph four, "The witness, Salvatore Montello, has informed Paul F. Corcoran of our office that absent a grant of immunity, he would invoke his Fifth Amendment privilege and refuse to answer questions put to him before the grand jury, which questions relate to violations of Title 18, U.S. Code, Section 659 and 371."

CROSS EXAMINATION

BY MR. COIRO (Cont'd):

Q Mr. Montello, does that refresh your recollection as to your demands?

A I said I don't remember the Fifth Amendment, Mr. Coiro.

Q You don't remember --

A No.

Q -- the Fifth Amendment?

A No.

Q After hearing me read that, is your recollection refreshed?

A No, I still don't remember that.

Q You still don't remember? One thing is certain, you didn't want to go to jail, did you?

A No, of course not.

Q And you don't want to go back to jail?

A I couldn't go back.

Q No. Because you have immunity?

A No. You know why.

Q You have --

MR. COIRO: Judge, --

THE COURT: Once again, answer the question.

THE WITNESS: Excuse me. I'm sorry, your Honor.

Q And you know something, Mr. Montello, I'm going to let you answer the question.

A Okay.

Q You don't want to go back to jail, because you are afraid, right? You are afraid for your life, right?

A That's right.

Q Because when you ran away and escaped, nine thouse inmates lost their privileges because of what you did?

A No, they didn't.

MR. WOODFIELD: I object, your Honor, to the tone of the question and it's utterally irrelevant and not only that, it's entirely incorrect.

THE COURT: It is not a question, it is a statement.

THE WITNESS: Can I answer him, your Honor?

THE COURT: No, it is not a question.

THE WITNESS: I can't answer?

MR. RICHMAN: I reserve a motion at this time, which I'll put on the record later.

THE COURT: All right. Do that later. Proceed, please.

BY MR. COIRO:

MR. COIRO: Would you bear with me a moment, Judge?

THE COURT: Surely.

Q Now, you testified that you received a call from this Davis, I think the jockey's name, is that correct?

A Jimmy Davis.

Q You received a call from him sometime in October, is that correct?

A Yes, sir.

Q Where were you when you received that call?

A My house.

Q You were at your home?

A Yes, sir.

Q By the way, you had know Davis before he called you, hadn't you?

A Yes, sir.

Q As a matter of fact, you had met him at the Spring Meet at the Poconos, had you not?

A Yes, sir.

Q And did you fix any race at that time?

Q We attempted to, but we couldn't.

Q You couldn't fix any?

A No.

Q You mean to tell me, at that Spring Meet, you didn't fix one race with Davis or somebody else?

A No.

Q You know a lady by the name of Roberta Greenspan?

A Who?

Q Roberta Greenspan? You don't know her?

A No.

Q You didn't go with her to the Poconos for the Spring Meet?

A Roberta Greenspan? Don't ring a bell to me.

Q Doesn't ring a bell?

A No.

Q Do you remember wining and dining in -- and escorting this lady, and taking her for $2,000. to fix races?

A Her name is Greenspan? I didn't know her name is Greenspan.

Q What is her name?

A Roberta.

Q You don't know her last --

A I thought it was a jockey.

Q You thought Roberta Greenspan was a jockey?

A Yes.

Q You're a horse player, now the only jockey is Robin Smith, the female jockey.

Q There are a few other ones.

Q You made it sound like Roberta had never -- you had never heard the name before?

A A long time ago.

Q A long time ago. By the way, all these things that you testified to here today, the jockey, the horse coming in, this, that, did you remember that on your own?

A That is easy, look at the program.

Q Who gave you the program to look at?

A The U.S. Attorney, the F.B.I..

Q They gave you this book back in 1975, didn't they?

A Of course.

Q And that is how your memory became so -- became sharply into focus, right?

A Right.

Q And it was looking at the records that you knew which jockeys were riding short horses, didn't you?

A No, I knew before that.

Q You didn't have any independent recollection of it?

A Mike, I knew the business I did with.

MR. COIRO: Judge, I move that that answer be stricken and that he address me as Mr. Coiro.

THE COURT: Yes, all right.

Q That is how your name -- that is how your memory became so sharp, didn't it?

A No, I remember the jockeys by name.

Q You remember the jockeys?

A Yes.

Q And you remember they were riding short horses?

A They had to be riding short horses, otherwise we wouldn't stop them.

Q Otherwise you wouldn't stop them?

A No.

Q I see. You remembered all of this some five years later, from 1970, it all came back into focus in 1975?

A Look at the chart and everything, of course.

Q So that you wouldn't recollect what happened back in 1970? You looked at the chart and you picked jockeys that were on short horses?

A No, I know them.

Q You know them?

A Mr. Coiro, --

Q Sure you know them, Mr. Montello?

A Right.

Q Now, by the way, how did you all get to the Poconos that day? The next day after you got this call? Question withdrawn.

You say that you got a call at your home from Davis, is that correct?

A Yes, sir.

Q How many days was that before you went to the Poconos?

A Two days approximately.

Q And I believe after you got that call, you testified that you called Mr. DiNapoli, is that correct?

A Yes, sir.

Q And that Mr. DiNapoli came to your house, is that correct?

A Yes, sir.

Q And when Mr. DiNapoli came to your house, who was present?

A Myself, Jimmy Santa Maria, my wife.

Q Your wife was present. That is your wife Helen, isn't it or your then wife Helen?

A Yes, the one before, you know.

(Continued next page)

Q I beg your pardon?

A The one before. You know.

Q It wasn't Helene?

A Yes. Helene.

Q That's what I'm saying?

A Right.

Q It was Helene, your second wife?

A Right.

Q Right?

A Yes.

Q And she was present also, right?

A Not in the conversation.

Q I didn't say at the conversation. She was present when Mr. DiNapoli entered your home?

A Yes, sir.

Q Right?

A Yes.

Q Okay. Now, the next day I believe you testified you went to the Poconos, is that correct? You went to the race track?

A Yes, sir.

Q How did you get there?

A My car.

Q Who was in your car?

A Jimmy Santa Maria.

Q Who was with Mr. DiNapoli?

A He come up by himself.

Q He went all by himself?

A With his father and his cousin.

Q I beg your pardon?

A He came up with his father and his cousin.

Q When did he come up?

A That night.

Q In other words, you didn't ride down there together?

A No, sir.

Q I see. In other words, Mr. DiNapoli arrived there with his dad and his cousin sometime later?

A Yes, sir.

Q And what time was it when they arrived?

A I think it was just before the exacta was going off?

Q Just before the exacta was going off?

A In the race track, right.

Q You had already made your deals that day as to what was fixed, right?

A Right. Definitely.

Q Already made the deal? You had spoken to

Davis and Laucirica and this other jockey, right?

A Fromel.

Q Fromel. You had already made the deal?

A Yes, sir.

Q So that when Mr. DiNapoli arrived there with his father, that deal had already been consumated?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q I think that's the night you said you hit a $28,000. exacta?

A Yes, sir.

Q Is that correct, sir?

A Yes, sir.

Q Tell this jury how much money you invested to win $28,000.?

A About thirty-five hundred. Something like that. Thirty-eight hundred.

Q Thirty-eight hundred?

A Something like that. Roughly.

Q Well, Mr. Montello, were you betting two dollar exactas or ten dollar exactas?

A Two dollar exactas.

Q Two dollar exactas?

A Yes.

Q Well, if you took every combination, every combination there is on an exacta, how does it come out to thirty-five hundred?

A What about paying the jockeys? Don't you figure them?

Q Did I ask you about paying the jockeys?

A You asked me thirty-five hundred.

Q I asked you what you bet. Do you understand the King's 3nglish?

A Yes, I understand the King's english.

Q Okay. What did you bet?

A I don't recall.

Q You don't recall?

A You understand?

Q Your memory goes back to 1971 like that. Look at the charts. See if it helps you?

A It's a wheel. It's a wheel back and forth. You have to buy so many tickets.

Q Come on.

MR. WOODFIELD: I object to Mr. Coiro's comments to the witness.

MR. COIRO: I didn't say anything to him.

Q Mr. Montello, you were a handicapper, right?

A Yes, sir.

Q A wheeler dealer, right? Holding up horses, short horses, right? Dead, they are dead, they can't run, right? Tell me, how much you invested to win this, your bet, bet to win this $28,000. exacta?

A It's hard to tell, Mr. Coiro. You got a wheel so many tickets. You got to pay the jockeys and --

Q Did I ask you about paying the jockeys? I move it be stricken.

THE COURT: Strike it. He is merely asking you what you bet on the race, the wheel or whatever you are talking about.

A It's hard to tell. You need maybe ten tickets for one combination. Ten tickets back to another combination. Twenty tickets to another combination. Twenty tickets to another combination. Goes to a lot of tickets.

Q Mr. Montello, directing your attention to Government's Exhibit Number 1, page four. Question withdrawn. I'm sorry. Starting on page three, going over to page four. Right? You now have the chart in front of you, right?

A Right.

Q You know how to read the telegraph, right? And you know how to read a racing form, right?

A Yes, sir.

Q Because when you were making that hundred thousand a year on crime, you were a pretty good race goer, weren't you?

A Yes, sir.

Q A pretty good bettor, right?

A Yes.

Q Okay. In the seventh race, how many horses were running in that race?

A I believe ten.

Q Ten, right?

A Yes.

Q Now, according to you, in that race, you had Davis and Laucirica on dead horses, right?

A Right.

Q You knew they definitely weren't going to win, right?

A Right.

Q That left you with eight other combinations?

A Right.

Q At two dollars a ticket, boxing every combination, what would it have cost you?

A You got to box them with all the other horses in the other races, Mike.

Q Box them. Tell me what it comes out to?

A It's hard to tell.

MR. RICHMAN: What's boxing, Your Honor?

THE COURT: What is boxing?

THE WITNESS: It is not a box. It's a wheel. Wheeling those eight horses.

A You got to wheel every horse back and forth for so many amount of tickets.

Q For two dollars a ticket?

A Right.

Q WOuld it come out to thirty five hundred. You know how to do it. Do it. I'll give you a pencil and paper.

MR. COIRO: May I, Judge?

THE COURT: Yes.

THE WITNESS: Very hard without the program.

Q That's a chart of all the horses that ran, isn't it?

A A program is different.

MR. COIRO: Judge, if I might most respectfully ask Your Honor for a recess at this time, I don't mind if he figures it out over lunch.

THE COURT: All right. We will recess at this time.

We will recess until two o'clock. Don't talk about the case, with anyone and give those papers back. Take the papers back, please.

THE LAW CLERK: Yes, Your Honor.

THE COURT: Leave that.

THE WITNESS: I have to take this.

THE COURT: Give him a pencil. Give him back his pencil or pen. All right. Now you can have my pad. All right. You'll get them back after lunch because I want them back.

All right. Have a good lunch now. Be back at two.

MR. COIRO: Thank you.

(the following occurred in the absence of the jury)

THE COURT: Gentlemen, Juror Number 3 just advised me --

MR. VICTOR: Your Honor, before we break?

THE COURT: I want to say something.

MR. VICTOR: I'm sorry.

THE COURT: I don't say very much but once in a while I'd like to make a statement. Number 3 juror just advised the Court that he goes on vacation starting Monday and I have no idea whether this case will finish tomorrow or the next day or whatever it

may be.

MR. RICHMAN: It won't finish by Monday.

THE COURT: Monday we are not sitting anyway. Monday is a holiday. So maybe when they come back, rather than go deeply in the case we will take an alternate in. Unless you want to just see what happens for the next two days.

MR. VICTOR: I'm sorry.

MR. WOODFIELD: My only concern I have about that is that puts us down to one alternate.

MR. VICTOR: Why does he want to leave?

THE COURT: Going on vacation. Why didn't he say so?

MR. VICTOR: Who is Number 3. I don't remember.

MR. WOODFIELD: Wait a minute.

THE COURT: You are talking about --

MR. RICHMAN: The motion I reserved before was a motion for a mistrial. The basis for that motion was Mr. Coiro -- I do not agree that he should have raised that particular issue at this juncture and sever my situation from Mr. DiNapoli's situation.

I would move for a mistrial as to Mr. Feder.

THE COURT: I see no prejudice at this time. Motion denied.

MR. VICTOR: What time are we beginning?

THE COURT: Two o'clock.

MR. VICTOR: We have lunch and we need time to --

THE COURT: Read it over lunch.

MR. WOODFIELD: There aren't many pages. I gave it to him before the witness took the stand.

THE COURT: I do all my work. I do it inside and outside. I am talking to people. Okay. 2:15. Be back at 2:15. You have 15 minutes after lunch to do it.

(lunch recess taken)

A F T E R N O O N S E S S I O N

(The following occurred in the absence of the jury.)

THE COURT: Ready, gentlemen? Seat the jury, please.

(Jury present.)

THE COURT: All right. Good afternoon, We are ready.

S A L V A T O R E M O N T E L L O , having been previously duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. COIRO: (Continuing)

Q Mr. Montello, would you be able to figure out how much you had bet on?

A Yes, I could. The best I could do right now.

Q Tell me what it is, please?

A $918.

Q $918?

A Yes.

Q That was for a $2 bet, right?

A Yes.

Q Okay. And that would be -- and then after you won the first race, the seventh race, then you would take the winning tickets and cash them in and that would allow you to

bet the eight race, is that correct?

A You would need enough tickets to go into the eighth race.

Q Right. In other words, you weren't allowed to just go and bet the last half of that eighth race for the Big Exacta? You had to win, cash in those tickets and then that allowed you to bet on the eighth race, right?

A Right. You exchange the tickets so they would give you tickets that you asked for.

Q It was an exchange? It wasn't an additional outlay of money?

A No.

Q Right?

A No, sir.

Q Okay. So that of course -- 800, 900 to bet the race?

A Right.

Q To bet the Big E?

A Yes, sir.

Q And then naturally in there you also had to include the expense of -- whatever you paid to the jockeys, right?

A Yes, sir.

Q And that would be 300 to each jockey?

A Some were 300.

Q 500?

A Or 500. Roughly.

Q Taking it at 500 and I'm confining myself to the 14, there were two jockeys that you claimed that were allegedly paid money on that day, is that right?

A No. There was more than that.

Q You tell me, Mr. Montello.

A You got Wholey in the seventh race. You got David and Laucirica. In the eighth race you got them again.

Q I beg your pardon?

A In the eighth race you got them again.

Q So there were three jockeys instead of two, is that right?

A Six.

Q Well, three in each race?

A Right.

Q In other words, you paid them 300 per race?

A Either 300 or 500. Like that.

Q Per race, is that it?

A No. For both.

Q For the whole night's work, is that right?

A Yes.

Q Okay?

A Yes.

Q Now -- I believe you testified the next night was the 15th, is that correct?

A Yes, sir.

Q October 15th. I think you said you won something like 5,000?

A Something.

Q And would you look at Government's 1, Mr. Montello, and again tell me how much your initial investment would have been to win that 5,000? Roughly?

A About the same again, Mr. Coiro.

Q Again, it would probably be betting $2 a ticket, probably be like 900 again or -- 8 or 900 a race, is that right?

A Approximately, I guess.

Q And then, naturally, again the payment to each jockey, right?

A Yes, sir.

Q Okay. Getting to the last day, Mr. Montello, the -- I think that was the 17th? I believe you testified that that Big Exacta paid 48,000, is that correct? Or -- and change?

A 48,000.

Q Roughly 48,000. Then I believe you also

testified that you bet a horse in the ninth race?

A Yes, sir.

Q Now, when you bet that horse in the ninth race, was that a fixed race also?

A Yes, sir.

Q In other words, you were sure that horse was going to win?

A Excuse me?

Q You were sure that horse was going to win?

A Yes. Yes, sir.

Q Well, had you bribed the other eight jockeys in that race?

A No.

Q Well --

A Laucirica was dead. And Wholey was dead.

Q In other words, I'm talking about --

A And Sage.

Q I'm talking about the ninth race. That wasn't an Exacta race, was it?

A Yes.

Q But not a Big Exacta?

A No, sir.

Q Just a regular straight Exacta race like they have here at the trotters?

A Right, one, two.

Q You have to pick the horse to run first and second?

A Right.

Q I believe you testified that the rider of that horse was a fellow by the name of Fromal, right?

A Yes, sir.

Q Now, there were one, two, three, four, five, six, seven, eight, nine horses in that race, right?

A Yes, sir.

Q Would you be good enough to tell me, did you bribe the other seven jockeys to stay out of the money?

A No.

Q You didn't, right?

A No, sir.

Q Whom did you bribe in the ninth race?

A Laucirica was dead. Wholey was dead. And Sage was dead.

Q That's three?

A Right.

Q Still left six horses?

A Right.

Q Right?

A Right.

Q You took all the combinations, right?

A Right.

Q Now, that -- how much did you win on that race?

A Over 11,000.

Q You won over 11,000. You also had picked a horse to win, is that right?

A Yes, because Fromal told me he loved the horse. The horse would leave on his own.

Q The horse would win on his own?

A Right.

Q I see. But you didn't have anything to do with Fromal in that race, right?

A He wouldn't hold the horse for the man.

Q I beg your pardon?

A He won't hold the horse maybe because he knew the horse could win.

Q He knew the horse could win?

A Right.

Q I see. And that's when you went back to the motel and you split up all of the money, is that right?

A Yes, sir.

Q How much did you split up that night, Mr. Montello?

A Roughly about 16 or 17,000 apiece.

Q That was your end, was say 17,000?

A Something like that.

Q And this was all done at the motel, is that correct?

A Yes, sir.

Q And there were a number of people present when this happened, right?

A Yes, sir.

Q I believe you gave us all of the names, all of the jockeys were there?

A Yes. Some of them.

Q Some of the jockeys?

A Yes.

Q Laucirica was there.

A Yes.

Q Fromal was there?

A No. Fromal wasn't there.

(Continued next page.)

Q Who was there, Mr. Montello?

A Laucirica, Davis, Parker and Tommy Mada.

Q And how much did you split up?

A Well, I paid all the kids. I gave them all a thousand apiece, plus I gave Davis two thousand.

Q No. I think you misunderstood me. What was the total amount of money that was split up?

A After all the expenses?

Q Yes.

A Roughly about sixteen, seventeen thousand apiece.

Q That was what you came out with? What you came out with?

A Right.

Q After all the jockeys were paid, one jockey two thousand, another jockey a thousand, a thousand five hundred, five hundred, right?

A Right.

Q Fine. Now let's go back to the time where you say that you got a call from Davis. That was back in October of 1970, right?

A Yes, sir.

Q Called you at your home?

A Yes, sir.

2

Montello-cross-Coiro

Q And then you placed a call to Vinnie -- to Mr. DiNapoli but you didn't get him, right?

A Yes, sir.

Q You spoke to his mother-in-law?

A Yes, sir.

Q And then Vinnie called you back, right?

A Yes, sir.

Q And you testified that you explained about this race fixing, is that correct?

A Yes, sir.

Q Well, Mr. Montello, back in 1970, you were still engaged in your criminal activities, right?

A Yes, sir.

Q And it's your testimony to this jury that you openly discussed this race fixing on the telephone?

A In a round about way.

Q Well, tell me what round about way, what did you do?

A I told him in Italian.

Q You told him in Italian?

A Yes.

Q We don't have any Italian speaking law enforcement officers?

A I don't think so at that time.

Q You didn't think so?

A No.

Q Oh, I see. You were hiding your crimes at that time, right?

A I was trying to.

Q Right? And you freely discussed it on the telephone, right?

A In a round about way, yes.

Q In Italian, right?

A Half and half.

Q Okay. Now, by the way, one thing is for certain, Mr. Montello: From early 1950's up until April of 1975, you definitely were involved in crime, right?

A Yes, sir.

Q And would you say, sir, that at that time you lied to law enforcement authorities?

A Sure.

Q Lied to keep your activities secret, right?

A Of course.

Q One thing is for certain: After April 1975, you became a truthful person?

A Yes, sir.

Q Because you were going to get up here, cooperate with the Government and cleanse your soul and

and tell it like it is? Right?

A That's what I'm doing.

Q I know that's what you are doing. Right?

A Yes

Q But that's for certain: After April of '75, you became a truthful person?

A Yes.

Q Okay. Now, in April of '75, when you started to cooperate with the Government, you were then placed in a witness protection program, weren't you?

A Yes, sir.

Q And, as a matter of fact, you received payments for that, don't you?

A Yes, sir.

Q What are you receiving every month?

A Approximately nine hundred.

Q Nine hundred a month?

A Yes.

Q That's for food, clothing?

A Yes, sir.

Q Right?

A Yes.

Q Now, aside from that nine hundred a month, what other monies did you receive?

A Nothing.

Q Nothing?

A No.

Q Are you sure?

A What do you mean? Subsistence?

Q Other monies from the Government?

A Oh, three thousand from the FBI.

Q FBI gave you three thousand dollars?

A Yes, sir.

Q And did they furnish the home in which you now live?

A No, sir.

Q They gave you money to furnish it, right?

A No, sir.

Q How did you furnish it?

A It was furnished.

Q It was furnished?

A Yes.

Q They rented you a furnished apartment?

A Yes, sir.

Q And what employment do you have right now?

A None.

Q Because your job is to testify, right?

A Yes.

Q Now, aside from the nine hundred, did they add anything extra?

A No, sir.

Q Well, you are living with your girl friend, aren't you?

A Yes, sir.

Q Don't they give you some money to support her too?

A That's all included.

Q That's all included in the nine hundred?

A Yes.

Q I see. Now, by the way, Helene, you said you left Helene, is that correct?

A Yes.

Q Because she was a pig, right?

A Well, it was an expression.

Q It's an expression, right?

A It's a bad wife. You know.

Q I beg your pardon?

A A bad wife.

Q She's a bad wife. That's the same lady that went and pleaded before Judge Neaher for a reduction in your sentence, isn't it?

A That was before she started fooling around.

Q That's the same lady that imposed upon the United States Government to allow you to visit her daughter?

A Yes.

Q Isn't that correct?

A Right.

Q Tell me, what did this lady do that was so bad that you left her?

A While I was gone?

Q Yes sir.

Q Lying to me about money. TAking money from everybody. Not paying her rent. Writing out bad checks. And many other things.

Q Those were the terrible things?

A Yes. She kept lying to me about not having no money and coming to visit me and bothering me for money. Almost driving me crazy in jail.

Q Well, you knew that writing bad checks was nothing new to you, wasn't it?

A No. She swore she wouldn't do it no more.

Q Even while you were at home, you allowed her to do it?

A I didnt allow her. She did it on her own. I used to have to make them good.

Q And that annoyed you because you had to make

them good?

A That is right.

Q Because you wouldn't support her the way she was supposed to be supported, would you?

A No. I supported her real good.

Q So real good, that right after you ran out of the house, you took up with Gloria, right?

A No, I didn't.

Q Two months later?

A After I left Helene.

Q Ater you left Helene, right?

A Yes. Mr. Coiro.

Q Right. Two months later you took up with Helene, right?

A No.

Q After you left Helene you took up with Gloria, right?

A Yes.

Q That was while you were still flipped out, right?

A I was still on the lam.

Q You were still on the lam and you were still flipped out, right?

A I was trying to surrender too.

9

Montello-cross-Coiro

Q You were still upset?

A Trying to surrender.

Q Why didn't you walk into the nearest police station?

A I was thinking about it.

Q It took you three months to make up your mind, right?

A Yes, sir.

Q Now, let's get to when they bring you to West Street. Right?

A Yes, sir.

Q They bring you to West Street and then you get to West Street on April 12, right?

A Yes.

Q There abouts?

A Yes.

Q And now on April 25, thirteen days later, you go and see the United States Government and you start to cooperate? Right?

A Yes.

Q And tell this jury why you cooperated?

A Threats on my life.

Q There were threats on your life. Tell the jury exactly what happened?

A Just said. There were threats on my life because they thought by me running away showed sign of weakness to the organization.

Q Also showed signs that you destroyed privileges for other inmates, right?

A No, I didn't. They still got them.

Q They wistled at you?

A They still got the privileges.

Q They didn't stop them after you went out?

A No, sir.

Q They didn't stop all bedside visits and funeral visits?

A No.

Q Until you were returned?

A No, sir.

Q No sir? Now, you were in the maximum security section of West Street, right?

A Yes.

Q Because you had escaped from federal custody?

A Yes, sir.

Q Right?

A Yes, sir.

Q And other inmates chided you and kidded you about what you had done, didn't they?

A They didn't chide and kid me.

Q They didn't chide and kid you?

A No. Kid me or kill me?

Q Kid you.

A They didn't try to kid me. They tried to kill me.

Q Tell the jury what happened?

A I just told you what happened. They tried to entice me to come out.

Q Entice you to come out?

A I seen the hack give up the key to the maximum security.

Q What's the name?

A I know him as Frank.

Q You don't know his last name?

A No.

Q Did you report it to the U.S. Attorney's office?

A Yes, I did.

Q Has Frank ever been arrested?

A No, sir.

Q Has Frank ever been indicted?

A No, sir.

Q Has anybody from West Street ever been before

a Grand Jury to explain what you say happened?

A Not that I know of.

Q This is something you made up, isn't it?

A I didn't make it up.

Q You didn't make it up?

A No.

Q Mr. Montello, would you lie not to go to jail?

A No.

Q No?

A I'd rather be in jail than be right here. I told you that once before.

Q You'd rather be in jail?

A Yes.

Q But you didn't ask to go back to jail, did you?

A I couldn't.

Q You demanded immunity, didn't you?

A No. I demanded protection.

Q You got protection?

A Right.

Q You are living with your girlfriend?

A Yes.

Q You are getting paid for it? You are living the life of ease, aren't you?

A No, I'm not.

Q You come and go with the Government's expense?

A No, I don't.

Q You don't?

A No.

Q Who pays your expenses?

A What?

Q Who pays your expenses?

A I don't come and go on their expense. They give me so much a month and I have to live on it.

Q And you sit back and enjoy it until you are brought into this courtroom, don't you?

A No, sir.

Q Show me or tell me what money you have earned on your own since you have been in the Government Witness Plan?

A NOthing on my own.

Q Nothing. For how long?

A I don't know. A year.

Q Over a year? Close to the tune of $19,000. worth?

A I don't know.

Q You don't know?

A No.

14

Montello-cross-Coiro

Q You just accept it?

A I got no choice.

Q You got no choice?

A No.

Q You go out and work, can't you?

A Not right now.

Q You're afraid, is that right?

A I'm not afraid.

Q You're not afraid. Then why don't you go back to jail?

A Over there I ain't got a shot.

MR. WOODFIELD: I object. That's very argumentative.

THE COURT: Stop the arguing.

MR. COIRO: I'm going to move on, Judge.

THE COURT: Starting to get argumentative.

MR. COIRO: I apologize.

(cont'd on next page)

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CROSS EXAMINATION

BY MR. COIRO (Cont'd):

Q Now, -- bear with me for a minute.

THE COURT: Surely.

Q Now Mr. Montello, who was present -- question withdrawn.

You stated that Vinny Gotto -- when I say Vinny, I mean Mr. DiNapoli -- Mr. DiNapoli got to the Pocono race track late that evening with his father, is that correct, sir?

A Yes, sir.

Q Can you tell me, if you remember, approximately what time he got there?

A It's hard to [illegible] you know, it was before the Big E..

Q I beg your pardon, sir?

A It was before the Big E..

Q Before the Big E.?

A I say, before the Big E..

Q Before the Big E.. The next day, I believe you testified, that you met in your motel room, is that correct?

A Yes, sir.

Q And who was present on that day?

A Everybody.

Q Mr. Montello, would you tell me who everybody is?

A I'm sorry. Myself, Mr. Santa Maria, Vinny DiNapoli, Laucirica, Fromel and Davis.

Q And Davis. And you are sure Mr. Davis was there?

A Positive.

Q Positive. By the way, I asked you whether or not you had fixed races in the Poconos in the Spring of 1970. What was your answer to that?

A No. I tried but we couldn't succeed.

Q You tried but you couldn't succeed. Mr. Montello, isn't it a fact that you had called Mr. DiNapoli from the race track or before you went to the race track, you were already in the Poconos and asked him to come down?

A No, sir.

Q But you told him you wanted to borrow $5,000. from him --

A No, sir.

Q -- and he came down?

A No, sir.

Q Well, let me ask you something:

Prior -- had you ever fixed any races in the Poconos --

A No, sir.

Q -- before 19 -- October of 1970?

A No, sir. We tried, we couldn't succeed.

Q This is when you had met all of these jockeys, right?

A I knew them before.

Q You had known them before, you tried on prior years to fix them?

A I knew Lou Cormine, Tommy Mada.

Q I see. You say that you never called Mr. DiNapoli at his home to come down with the $5,000. that you wanted to borrow?

A No, sir.

Q Had you ever borrowed money from Mr. DiNapoli before?

A Yes.

Q You had? On how many occasions?

A A couple of occasions, I guess.

Q And each time he loaned you the money?

A Yes, sir.

Q All right. Now, you also testified that Mr. DiNapoli's father cashed a $28,000. ticket, is that

correct?

A First night.

Q First night. He cashed it in his own name, is that correct?

A Yes, sir. The man didn't know nothing about it. The man had nothing to do with it.

Q I didn't say that he did, Mr. Montello.

A I just want to clarify that.

Q I didn't say that he did.

A Okay.

Q The man used his own name, provided identification, cashed the ticket, is that right?

A As far as I know, yes.

Q I believe you said that Vinny told you, let my father cash it, is that correct?

A Yes, sir.

Q Right?

A Yes, sir.

Q What was the rush about cashing the ticket that night?

A Just wanted to cash it. We didn't have no cash to work for the next night.

Q Well, according to you, you had gone down there with cash to fix these races, right?

A We used it, I used it. I'm waiting to cash the $28,000. ticket. Without that, I got no money to work with.

Q What about the $900.?

A What about paying the jockies?

Q Okay. What about going there the next night to cash it? Was the track going to run away?

A No, it wasn't going to run away.

Q Oh. The money was there, wasn't it?

A Of course.

Q The track wasn't going to close its' doors, right?

A I don't think so.

Q Yes, you tell -- you tell this jury that Vincent Dabel told his dad, go ahead and cash the ticket?

A That is what he did.

Q That is what he did?

A Yes.

Q That is what you say he did?

A That is what I seen.

Q That is what you seen? And your memory is good as to those events?

A When it comes to races, yes.

Q When it comes to races. You're positive of that, right?

A Yes, sir.

Q And yet, the Government had to show you this chart book when they questioned you back in August of '75, to fill in the details, didn't they?

A No, just about cer'ain things, that is all.

Q Just about certain things. Just tell me some of those certain things that you had to refresh your recollection?

A I knew all the jockies and everything.

Q You knew -- you knew all the jockies?

A Yes. That was involved in the race fixing.

Q Okay, you knew all the jockies, that were involved in race fixing?

A Yes.

Q Oh. You didn't know every jockey at the track?

A Of course not, not at that time.

Q Not at that time, right?

A No, sir.

Q And when you wanted to cooperate and

speak to the Government in August of '75, these details were fresh in your mind?

A It was April of '75?

Q It was April of '75.

A When I came and testified?

Q Yes, about these events, right?

A Yes.

Q You're positive of that?

A Positive about what, Mr. Coiro? I don't understand what you're talking about now. So much confusion.

Q I'm not trying to confuse --

A Yes, you are.

Q That is the last thing in the world I want to do. In April of 1975 --

A You're talking after West Stree?

Q Definitely after West Street.

A That is when I started to cooperate.

Q One thing is for certain, before that you were cooperating with nobody?

A Right, right.

Q You were bad, right?

A I was a thief.

Q A thief?

A Right.

Q Liar, blackguard, con man, name it?

A Right, right.

Q Now, an oath, this is meaningful?

A Excuse me?

Q Now, an oath is meaningful to you?

A Means my life.

Q Means your life, right. Now, in April of 1975, after West Stree, okay?

A Yes.

Q You cooperated with the Government?

A Yes, sir.

Q You told them about all of this busines of fixing races in the Poconos, right?

A I believe so. Maybe later on.

Q Well, I'm asking --

A We were talking about the hijacking and stuff like that.

Q That is what I'm asking you about, Mr. Montello. I'm talking about this race fixing case?

A I don't remember exactly what date I told them.

Q Was it sometime in April?

A No, it could have been after that.

Q It could have been May, it could have been June?

A Could have been.

Q July, August?

A I don't know, I just can't pin-point.

Q You just can't remember. Okay. One thing is for certain, when you were talking about this race fixing in the Poconos, you consulted this book back in 1975, right?

A Yes. So?

Q And you looked at the particular races run that day, right?

A I had to show them what race I was talking about.

Q You had to show them what race you were talking about. And this chart, this book, containes everything about the race that was run, right?

A Of course.

Q Including the dollar odds? The way the horse ran at the different stages around the track?

A Yes.

Q How many lengths he finished in front, the time, everything?

A Yes.

Q The jockeys' names, horses that were scratched, right?

A Yes, sir.

Q Is that right?

A Yes.

Q Now, you stated that these jockeys that you were bribing, were riding what we consider favorites, right?

A Yes, sir.

Q Okay. I would ask you to look at Government's Exhibit one and ask you to turn to page four.

A Yes?

Q Right?

A Yes, sir.

Q No, I got the wrong page, I'm sorry. I meant page seven. Do you have that, Mr. Montello?

A Yes.

Q Looking at the 7th race? In there, you testified that you bribed Davis and Warley, is that correct?

A Excuse me. Davis and who?

Q And Warley, is that how you pronounce it?

A Wholey.

Q Excuse me?

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A Wholey.

Q Wholey, right?

A Yes.

Q Is that correct?

A Yes, sir.

Q And you tell -- you told them to make sure to keep their horses dead, is that right?

A Yes, sir.

Q Isn't it a fact that Davis' horse went off at the dollar odds of $8.30 to the dollar?

A Yes, sir.

Q That would have paid $16.60, right?

A $18.60.

Q $18.60? With your $20. back?

A Yes.

Q And Wholey's horse would have paid $42.60?

A Right.

Q So that you were bribing jockeys to keep horses from winning that would pay a greater price?

A No. We just did that to eliminate the wheel so we wouldn't have to go for more money, that is all.

Q You did that to eliminate the wheel?

A The wheel, because we couldn't get to the favorite. We couldn't get to Gaucho's horse.

Q I'm sorry?

A We couldn't get to the favorite in that race, understand? So not to make these horses run it, to eliminate the expense, that is all that was about, --

Q How much --

A -- but go to the next race.

Q How much would it have amounted to in expenses?

A What?

Q How much would it have amounted to in expenses?

A A few hundred more.

Q A few hundred?

A Yes, but you can't eliminate the favorite.

Q You're going in on a fixed race and your looking to win thousands and thousands and you're worried about a few hundred?

A But you can't eliminate the favorite. That is why we didn't bother. The favorite win the race, $1.20 to $1.00. If we could eliminate him, would have been a different story.

Q Then, why are you paying these fellows

13 money not to win a race if your sure the favorite is going to win it?

A Look at the race, that will explain to you why.

Q I'm talking about the Seventh Race?

A I'm talking about the Eighth.

Q We're talking about the Seventh Race now. I'll give you a chance to get to the Eighth Race.

A You couldn't reach the favorite, Mr. Coiro.

Q Then, why pay people money if you can't beat the favorite?

A Eliminate the expense of wheeling two other horses with another field.

Q Another hundred or two hundred?

A Could be more too, we don't know.

Q You're going for thousands and you want this jury to believe you wanted to save two hundred?

A No, I want the jury to believe I couldn't stop the favorite, that is all it amounted to, the favorite win the race, why don't you explain that?

Q So the favorite won the race. I'm trying to find out from you, if you know the favorite is going to win, why are you bribing other jockeys to hold the horses back?

A To eliminate the expense and stop the second half, we stopped the second half.

Q Now, you stated -- by the way, I think you said that after you won this last race, you said, "Let's get out of here, it's too hot," is that what you said?

A Yes, sir.

Q What was hot about it?

A $48,000. exact at that one winning ticket. Feder, was cashing every night. Said, let's get out of here.

Q You said, "Let's get out of here," right?

A I wanted to go home.

Q Did anybody stop you and question you?

A Nobody.

Q Any of the track security --

A No, sir.

Q -- say anything to you about it?

A No reason to stay.

Q The fact of the matter is, there is no reason to stay because the meet was over, wasn't it?

A Right. Why should I stay?

Q It wasn't a question of being hot, the meet was over?

A It was still hot, too.

Q You had done your deed, there was no more races to be run, let's back-up and go?

A It was still hot. Everybody knew there was one winning ticket, $48,000..

Q You were leaving anyway?

A So?

Q You didn't have to cash the ticket that night?

A When can I cash it?

Q You can cash it at anytime.

A The meet was closed, we wanted the money that night.

Q You just wanted the money, say it?

A Everybody wants money. Don't everybody want money?

Q You wasn't worried about it being hot or not, you wanted the money? You never met with all of these jockeys that -- question withdrawn.

You never gave money to all of these different jockeys that you mentioned here today, did you?

A No, sir.

Q That was done through, I believe you said

Davis, wasn't it?

A Yes, sir.

Q Did -- jockey Davis who spoke to these other people? Now, at these conversations that you used to have with Davis, your sure that Mr. DiNapoli was present at each of those conversations?

A The last three days he was.

Q Yes. That was in the -- the motel room on the bed?

A Right, we had adjoining rooms, Mr. Coiro.

Q In all these conversations, everybody was sitting on the bed?

A No place to sit, just relaxed.

Q No chairs in this motel?

A Some sat on chairs, but most on the bed.

Q Everybody was on the bed, right?

A Yes.

Q Including the money?

A That was later on.

Q But everything was on the bed?

A Not the night we cut up the money, nobody was on the bed that night.

Q The money was on the bed?

A Yes, we were looking at it.

Q You were looking at it. You had seen more than $48,000. in cash before, hadn't you?

A Yes.

Q That was petty cash to you?

A Not petty, it was something.

Q Something.

A A piece of bread.

Q A piece of bread, right?

A Yes.

Q A good night's work, right?

MR. COIRO: I have no further questions, Judge.

THE COURT: We will take a short recess and then we will proceed.

(Recess taken)

(Continued next page)

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Montello - cross

(After recess.)

(The following occurred in the absence of the jury.)

THE COURT: Who is going to examine next?

MR. VICTOR: Your Honor --

THE COURT: Who represents DiNapoli?

Well, you both can't cross-examine. I never had a trial where two lawyers sit at a table and both of them take a crack at a witness. I have been around twenty years and I never had this.

MR. VICTOR: I would respectfully request --

THE COURT: No, you cannot.

MR. WOODFIELD: I vehemantly object. Your Honor, if you have seven attorneys --

THE COURT: You do not have to object. You need not object. It can't be done. It is totally and highly improper. I won't permit it in my court under any circumstances.

Now, Mr. Richman, I have one other step to go. I also call your attention to the fact that I do not expect a lawyer who is cross-examining to go over the same ground that the prior lawyer has gone over.

MR. RICHMAN: Your Honor, I have no intention of doing that, but with a little bit of leeway --

THE COURT: A little bit. Of course, it will be with a little bit of elasticity. But I do not expect you to start going over how many times you beat your wife because we already know that he did beat his wife. Just so long as we have the ground rules, my ground rules are that there is no overlapping on cross-examination because you can cross-examine from now until doomsday and it doesn't make it any stronger; it doesn't make it any weaker. You know that as well as I do.

MR. RICHMAN: Your Honor, with relation to that particular question, however, on the issue of beating his wife, there is a specific question I do have in mind.

THE COURT: If the question is relevant and an answer is forthcoming, that is one thing. But if it continues in the same vein, I would rather you not have me make a statement so that it looks like I am on anyone's side. I am not on anyone's side. I would rather sit here and mind my own business and listen to the testimony, and charge the jury at the right time rather than get involved in an altercation with the lawyers about how to conduct themselves at the examination.

Okay, I can't be fairer than that. I don't know any way to be fairer.

MR. RICHMAN: Your Honor, there is one further point. There was some documentary evidence which I

intend to introduce through this particular witness. I didn't foresee that it would be today at this stage of the proceeding since Mr. Coiro said he will take a whole day with the witness. I did not have the foresight -- Never mind, it's here. Okay. I didn't think it would be here.

THE COURT: Bring in the jury.

(The jury thereupon returned to the courtroom at 3:11 o'clock P.M.)

THE MARSHALL: Are you ready for the witness?

THE COURT: All right, yes, bring the witness here.

S A L V A T O R E M O N T E L L O , having been previously duly sworn, resumed the stand and testified further as follows:

MR. RICHMAN: Good afternoon, Mr. Montello. My name is Murray Richman. I represent Mr. Feder.

THE WITNESS: How are you?

CROSS-EXAMINATION

BY MR. RICHMAN:

Q Mr. Montello, can you tell us when or approximately when you first met Eddie Feder?

A Eight years or maybe nine years.

Q I am so sorry. I am hard of hearing. Can you speak up?

A Eight or nine years. I met him through Vinny

DiNapoli.

Q Eight or nine years ago?

A Yes, roughly.

Q So that would be approximately a year or two before the events you just described this morning?

A Roughly.

Q So you didn't know him too well during that period of time?

A No, sir.

Q Can you describe for me, if you can, how Mr. Feder looked during that period of time?

A How he looked?

Q Yes.

A He had long hair.

Q Long hair?

A Yes.

Q The same color hair?

A Unless he bleached it.

Q No, more or less to the best of your recollection?

A A little lighter hair, I think.

Q Lighter hair?

A Lighter and longer.

Q How about more on top?

A He may have. Maybe he had a toupee on.

Q Do you know how old Mr. Feder was at the time?

A Not really.

Q Do you know he is younger than yourself?

A I guess so.

Q Now, during that period of time he was approximately 33 years old, if you know?

A I don't know.

Q Do you know at that time whether he was married?

A I don't recall.

Q Did you ever meet his wife?

A Yes, I did.

Q So that you know he was married?

A No, I met her after I met him.

Q How much after?

A I don't recall.

Q But you knew he was married?

A Yes.

Q If I can take you back a moment, and I will go over this briefly, you have indicated to us that you had spent a considerable portion of your life as a criminal?

A Yes.

Q Will you tell us with any reasonable degree of certainty the number of crimes you committed in your life?

A That would be hard to answer.

Q Well, could you estimate, is it in the numbers by thousands?

A No.

Q Hundreds?

A No.

Q Tens?

A A little more, maybe.

Q When was the first time that you committed a crime, if you recall?

A Early '60's, late '50's, I don't know.

Q What crime was that?

A Possession of money, I think.

Q Possession of money?

A Yes, something like that.

Q Well, not the first time you got caught, I am talking about the first time you committed a crime.

A In my twenties, I guess.

Q That was, oh, twenty years ago?

A Yes.

Q You remember what that crime was?

A Not really.

Q And you consider -- you had a lot of crimes before you first got caught in 1962 or thereabouts?

A Yes, sir.

Q Will you tell the jury if you would the numbers or types of crimes you committed during that period of time?

A Hijacking,

THE COURT: I do not want to limit you but I believe we have been extensively over his criminal background.

MR. RICHMAN: On the question of credibility, your Honor.

THE COURT: Credibility? There is only so many times he can tell us us how many crimes he committed. He has repeated it at least fifteen times now as to the crimes of approximately '52 to date.

MR. RICHAMN: Well, your Honor, will you give me a few more moments?

THE COURT: I will give you another minute and a few more questions.

MR. RICHMAN: I will continue, your Honor.

THE COURT: I am not trying to limit your cross-examination, but the scope of your examination in view of the fact that it has been gone into. It doesn't make it any more or less effective.

MR. RICHMAN: Thank you, Judge.

Q Now, Mr. Montello, when was the last time that you committed a crime?

A The last time I committed a crime?

Q Yes.

A Bank robbery.

Q Bank robbery?

A Yes.

Q How about while you were on the lam?

A No, sir.

Q Were you supporting yourself in borrowing money?

A Borrowing money? Yes.

Q From whom?

A My family.

Q Who in your family?

A My sons.

Q Your sons? Who else?

A That is all.

Q How much money did you borrow from your sons?

A About $1,500.

Q Over a period of three-and-a-half months?

A Yes.

Q And you were able to sustain yourself together with your girlfriend during that period of time on $1,500?

A I wasn't with my girlfriend at the time.

Q Well, a portion of that time you were, weren't you?

A A few days maybe, that is all.

Q Will you tell us how many hijackings you were actually involved in?

A Maybe four or five.

Q Four or five. Were they in the recent past or were they in the long range past?

A 1970, some 1971 and --

Q So when you testified earlie, maybe a few minutes ago about hijackings back in the '50's and '60's you were in error?

A I never hijacked -- I never said that.

Q All right, what did you say, I am sorry.

A You asked me what kind of crimes I committed.

Q Oh, I am talking about your earlier crimes.

A Burglaries.

Q Now, with relation to these hijackings about which you testified -- about which there was testimony -- they were had on or about you say the '70's, 1971, 1972, in that period of time?

A Give or take.

Q In 1970 you were indicted for something to do with Korvettes, weren't you?

A Yes, sir.

Q In fact, it was a burglary of Korvettes to the

tune of $126,000?

A Yes, sir.

Q And if I am not mistaken you were incarcerated in Nassau County in August of 1970 for that crime?

A I was never incarcerated in Nassau County.

Q Well, you were incarcerated somewhere -- you were arrested for that crime?

A I made bail the same day.

Q You made bail the same day?

A Yes.

Q How much was the bail?

A $20,000.

Q Who put it up for you?

A Myself.

Q You put your hand in your pocket and said, "Here is $20,000 bail?"

A A bail bondsman.

Q You remember the exact date?

A No, sir.

Q But it was August of 1970?

A I believe so. I am not sure. I can't pinpoint on the date.

Q Would you say I am correct?

A No, I don't know. I can't say if you are wrong

or I can't say if you are right.

Q Would you accept my suggestion of August 1970 as being the approximate date of the alleged event?

A I don't know if I should accept it.

MR. RICHMAN: You don't accept it?

I will get back to that.

May I have a moment, please, your Honor, sir?

I will move on to another point and come back to this.

Q By the way, when you were hijacking, did you know a person named Tuttie?

A Yes.

Q Tuttie is a killer, isn't he?

A He killed his girlfriend, if that's what you mean.

Q Yes. He also shot his son, didn't he?

A I believe it ricocheted and hit him in the backside.

Q This was one of your partners, this Tuttie?

A Yes.

Q This is the man you went hijacking with?

A Yes, sir.

Q Now, I direct your attention, if I might, to certain documents to call to your attention, would this refresh your recollection as to the approximate time you were

involved in this Korvettes arrest?

A This is Hempstead.

(continued on next page)

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Montello - cross

Q Well, you were arrested in that period of time in August of 1970, weren't you?

A This is Hempstead. I was locked up in Suffolk County.

Q Suffolk County. Oh, I am sorry, Nassau County, Suffolk County, but you were locked up somewhere for that particular charge?

MR. WOODFIELD: Excuse me. If this exhibit is going to be marked I wish it would be marked and not flashed before the jury.

MR. RICHMAN: I am not flashing anything before the jury. All I am doing is making reference to it.

THE COURT: It should be marked for identification.

MR. RICHMAN: I have no objection to having it marked for identification. And if he wants it in evidence I will be glad to put it into evidence.

THE COURT: All right, then we can mark it in evidence.

THE CLERK: This is one page.

MR. RICHMAN: Mark the whole document and I will make reference to it.

THE COURT: Set of documents marked Defendant's

Exhibit B for identification.

MR. RICHMAN: Thank you, sir. Will you mark it Defendant Feder's Exhibit A for identification.

THE CLERK: No, because --

THE COURT: We have one already.

MR. RICHMAN: Not a Feder exhibit.

THE COURT: We have it for the defendant. Both can't have the same marking.

(Set of documents referred to was received and marked Defendant's Exhibit B for identification.)

xxx

Q Does this refresh your recollection as to the time you were arrested out in Long Island, for the sake of a more distinct definition?

A Yes, sir.

Q Now, when were you arrested?

A I don't remember the date.

Q Does this refresh your recollection, the thing I showed you (indicating)?

MR. WOODFIELD: Your Honor, I would request a sidebar. May I, your Honor, on an important matter, with regard to this exhibit?

THE COURT: All right, he is entitled to a sidebar.

(The following discussion took place at the

sidebar between the Court and counsel.)

MR. WOODFIELD: I have no objection because I understand the view of the law that anything can be shown to the witness to refresh his recollection. But I do have an objection when something is opened up which is entitled "Suspect surrenders."

I stayed away from organized crime activies, that these defendants might be involved in organized crime. And now he is walking by the jury and with this open in front of the jury saying, "Suspect surrenders" --

THE COURT: I didn't see it. But I thought it was his rap sheet. I didn't know that it was that.

(The following occurred in open court.)

BY MR. RICHMAN:

Q Now, referring to Defendant's Exhibit B, does this refresh your recollection as to the time that you were arrested for that particular crime, directing your attention to the date on top?

A May I read it, please?

Q Read the whole thing.

THE COURT: That is not the purpose of it. He doesn't have to read it. He merely asked you

whether or not it refreshes your recollection about the date, that is all.

THE WITNESS: It doesn't really.

MR. RICHMAN: May I respectfully request a moment.

(Discussion ensued between Mr. Richman and Mr. Woodfield out of the hearing of the reporter.)

THE COURT: If you read the whole thing it might refresh your recollection?

THE WITNESS: Yes.

THE COURT: All right. He says if he read the whole thing it might refresh his recollection. Let him read it.

THE WITNESS: Yes.

THE COURT: Now it does?

THE WITNESS: Yes.

Q It does refresh your recollection?

A Yes.

Q So would you say that on or about the date indicated you were arrested for that particular charge?

A Yes.

Q That would be on or about the 21st day of August, 1970?

A Yes.

Montello - cross

Q About a month and a half before the event you described this morning?

A Yes.

Q You have no clear recollection of those events, is that right?

A No, sir, not the date.

Q And who signed on the bail application for you, or the bail receipt?

A It may have been my brother.

Q Which brother was that?

A I think Vinnie.

Q Your brother Vinnie?

A I think so.

Q He's a good brother?

A Yes, sir.

Q Are you friendly with him?

A So, so.

Q Now, to get back to Tutti. Tutti was in jail at the time and you wanted to go hijacking?

A I never started a hijacking until he had come home.

Q I beg your pardon?

A I never hijacked until Tutti came home.

Q In fact you waited for him to come home so

you could use him on a hijacking?

A No.

Q You took him out on bail, didn't you?

A Yes.

Q Then you used him on a hijacking?

A No, we started hijacking fur loads.

Q You used him because he was a tough man, wasn't he?

A No.

Q He was a killer?

A He wasn't a killer.

Q You told me before he killed his wife and he shot his son.

A He was very good with furs.

Q Furs?

A Yes.

Q How about with guns?

A I never seen him with guns.

Q Didn't Tutti supply the arsenal for this particular venture?

A No, we used to put it some place where Tutti knew.

Q What was that?

A We used to put them some place where Tutti

knew.

Q What does that mean?

A Hide the arsenal, like you just called it.

Q Well, he handled the guns?

A Yes. But I never seen him kill his girl friend, if that's what you are suggesting.

Q No, I am not suggesting that you saw that.

A You are confusing me, I want you to know that.

Q I don't really mean to --

A Well, all right.

Q Now, Mr. Montello, were you ever prosecuted for that Korvette's offense?

A No, sir.

Q They dropped the case?

A The witness disappeared. He ran away.

Q Oh, how many bank burglaries were you involved with?

A About three.

Q A bank burglary is you break into a bank?

A Yes, sir.

Q Were you ever involved in a bank robbery as distinguished from a bank burglary?

A No, sir.

Q Were you ever charged with a bank robbery?

A No, sir.

Q How many department stores did you break into?

A About three.

Q And what department stores were they?

A Korvette's, Klein's, I forget the others.

Q How many night clubs did you break into?

A A few.

Q Can you give us their names?

A Pep McGuire's in Queens.

Q When was that?

A In the early '60s.

Q Any other night clubs?

MR. WOODFIELD: I object to this as being repetitive.

THE COURT: Yes, it is repetitive.

MR. RICHMAN: I am sorry. I will go on to something else.

Q By the way, were you ever prosecuted for those crimes?

A I never got caught.

Q Did the Government ever prosecute you?

A The statute was over.

Q In other words, you got complete immunity about everything that you said was involved in those crimes?

A The cases were finished. You know that.

Q Well, you tell me that.

A Well, they were done a long time ago.

Q Are you saying that in the last five years you committed no other crimes?

A In the last five years?

Yes, I went to jail for bank robbery, didn't I?

Q Is that the only crime you committed in the last five years?

A Well, hijacking.

Q How many race tracks did you fix?

A Pocono Downs.

Q Oh, we know that. You testified to this one. How many other race tracks did you fix?

A I went to Charles Town once.

Q Did you fix the track there?

A I tried to.

Q Did you fix it?

A Well, once.

Q And how many other places?

A That's all.

Q You used to go to the track a lot?

A All the time.

Q In fact, if I'm not mistaken, you and your brother have some kind of a tout sheet?

A A tout sheet?

Q I am not too familiar with gambling terms. I don't even win prizes in crackerjack boxes. But if you can tell me, or tell the jury, what a tout sheet is?

A Well, I never had one.

Q Your brother had a tout sheet?

A Yes.

Q You were registered in Washington as a tout?

A Me?

Q Well, your brother was?

A I don't know.

Q You know he had sheet that was a registered tout sheet?

A What do you mean by a tout sheet?

THE COURT: How do you spell that "tout"? I don't understand that.

Q When you go to a race track --

THE COURT: How do you spell it?

MR. RICHMAN: I don't know how to spell it.

MR. COIRO: T-o-u-t, your Honor.

THE COURT: Tout. It didn't come across that way, as tout. I was wondering what you were

saying, to be honest with you. All right, a tout sheet.

MR. RICHMAN: I am sorry.

Q I understand it's called a handicap sheet?

A Yes, handicap sheet.

Q Your brother had a handicap sheet registered in Washington?

A I don't know if it was registered in Washington.

Q But he had a sheet which he published?

A Yes.

Q And you and your brother knew a great deal about racing?

A Definitely.

Q You prided yourself on your knowledge of horse flesh?

A Yes, sir.

Q And I might show you this. These are generally referred to as tout sheets --

MR. RICHMAN: I would respectfully request that they be marked as Defendant's Exhibit C for identification (handing to court reporter).

THE COURT: Give it to the clerk.

MR. RICHMAN: I am sorry.

THE COURT: In the Supreme Court the stenographer does it. In the Federal Court the clerk does it.

THE CLERK: Defendant's Exhibit C for identification.

(Document referred to was received and marked Defendant's Exhibit C for identification.)

Q These are examples of what a tout sheet or a handicap sheet are?

A Yes.

Q How frequently would you go to the track in a given year?

A Every day if I could.

Q Every day if you could?

A Yes.

Q It doesn't matter where it was. Did you ever go to Delaware?

A Maryland?

Q Yes, Maryland.

A Yes, sure.

Q Did you ever go to Monticello?

A Maybe.

Q Did you ever go to Aqueduct?

A Yes, of course.

Q Yonkers?

A Yes.

Q You were a gambler?

A Yes.

Q You were a pretty big gambler?

A Yes.

Q Did you often win?

A Many times.

Q Because you knew horses?

A They lose too. They lose too, gamblers, you know --

Q Oh, we know that.

A -- when you gamble legitimate.

Q But most of the time you gamble, as you just put it --

A In New York.

Q Well, you just told me you only fixed one in Charles Town, or you tried to, and Pocono?

A Yes.

Q You went to Delaware. Did you fix any races in Delaware?

A I couldn't do nothing.

Q But you tried?

A Yes.

Q How many times did you go to Delaware?

A A few times. He was with me.

Q He was with you?

A Yes.

Q And did you fix any races?

A No.

Q You had a lot of different people at different tracks, with your friends, you had them with you and would suggest races for them to bet on, wouldn't that be fair to say?

A No, that's touting.

Q Well, let's say for example you went to Monticello, and you went with a couple of friends, Jimmy Santamaria, a couple of other people -- I don't know who your friends are -- and you looked the sheets over and you figured out the percentages, and you made certain suggestions for bets, wouldn't you?

A Just horses that you like.

Q Well, those that you knew?

A Normal gambling.

Q By the way, did Mr. Feder ever go with you anywhere?

A No, sir.

Q And when you used to gamble would you say that

you were the leader of the pack?

A No such thing as leader of the pack, when it comes to gambling.

2/3 Q Well, you were the most sophisticated gambler present, would you say that?

A No, not really.

Q Well, you gambled every day?

A Well, you are a lawyer --

Q Yes. It is my business. Is gambling your business?

A Yes.

Q Gambling was your business?

A Yes, sir.

Q And you were feeding your family through gambling aside from criminal acts?

A Yes, if I could.

Q You made some good money?

A Yes.

Q And did you know a lot of people?

A Definitely.

Q I am sorry. I can't hear you. Will you keep your voice up?

A Yes, definitely.

Q You knew a lot of jockeys, trainers, and other

gamblers; would that be fair to say?

A Of course.

Q Now, when you made winnings did you often ask people to pay -- you know, turn your tickets in for you?

A I didn't have to.

Q Did you ever do it?

A I didn't have to.

Q Did you ever do it?

A You don't have to because it wasn't an exact race. I mean, explain yourself and I can answer you.

Q Did you ever ask someone else to cash a ticket for you?

A If I was sitting with someone and say do you want to cash a ticket for me, what's wrong with that.

Q Nothing.

A It's something that you don't have to sign for.

Q What about if you did have to sign for it, would you cash it in yourself?

A No, sir.

Q You would have someone else do it?

A That's right.

Q How many people have you had doing it for you?

A Never.

Q Never? In your whole life, never?

A Never.

Q You will say that and swear to that right now?

A Not that I remember.

Q Not that you remember? Are you now modifying your answer with not that you remember?

A Not modify it. It is just that I don't remember.

Q All right. We willaccept that.

By the way, with all these winnings and all these proceeds at the time did you ever file an income tax return?

A No, sir.

Q Are you aware that failure to file an income tax return when you have income is a violation of the Federal Tax laws?

A Yes, sir.

Q Are you being prosecuted for any violation of the Federal tax laws?

A No.

Q Are you being given immunity for that?

A No.

Q Do you think you are going to be prosecuted, frankly?

A I don't think so.

Q By the way, and this is curious, referring t4 your wife Helene as your second wife, she is not your second wife; she is your third wife?

A Yes.

Q Did you beat your first two wives?

A No.

Q Only your third?

A Right.

Q Do you love your third wife?

A No.

Q You never did?

A I thought I did.

Q When did you think you did?

A Huh?

Q When did you think you were in love with her?

A Well, oh --

MR. WOODFIELD: I object again. I really do not see the relevance of this. In any event we have gone over it.

MR. RICHMAN: We are dealing with the credibility of the witness, your Honor. I think it is quite germane to the issue.

THE COURT: I think that it has pretty well

been gone over.

MR. RICHMAN: There is an issue, if you please, Judge, as to credibility specifically.

THE COURT: It really is not the issue in this case. Even credibility loses its effect after a while.

MR. RICHMAN: I would respectfully request the opportunity to try the case of Mr. Feder.

Q Now, Mr. Montello, you loved your wife while you were in jail, didn't you?

A I thought I did.

Q In fact she came to see you frequently?

A She came to complain to me I told you -- what's your name?

THE COURT: I think we have been through this. He told us about the complaining.

MR. RICHMAN: That's exactly the point.

THE COURT: That is why he didn't like her any more.

Q Well, she traveled all the way from New York City two or three times a week to see you, and it was a three-and-a-half hour trip.

A To aggravate me for money. I told you this.

Q Do you remember testifying on September 20,

1976, in another trial?

A Yes, sir.

Q Do you remember being asked the following questions and giving the following answers:

"Q You sat in the visiting room from 8:30 in the morning until 3:30 in the afternoon? Right?

"A No, not every day."

Do you remember giving that answer to that question?

A I may have.

Q "Q At least four out of seven?

"A No, sir."

Do you remember that question and that answer?

A Yes, sir.

Q "Q You were holding hands with your wife?

"A Of course."

Was that question put to you and your answer given?

A Yes, sir.

Q "Q You were in love, right?

"A Of course."

Was that question and answer given?

A Yes, sir.

Q So she wasn't complaining to you. You were

holding her hand and telling her how much you were in love with her?

A At that time I didn't know she was a liar and what she was doing.

Q When did you find out she was a liar?

A When I came out on the lam and tried to help--

Q Oh, after you ran away you found out she was a liar?

A Yes, all the truth came out.

Q Who told you this, your friends?

A Everybody.

Q The same friends you testified against in half a dozen cases?

A No.

Q You are a professional witness, aren't you?

A You are a professional lawyer --

MR. WOODFIELD: I object, your Honor. First of all as to his statement of the facts --

MR. RICHMAN: As to the facts, the jury will decide the facts and certainly not the U.S. Attorney.

MR. WOODFIELD: Nor defense counsel in his questions.

MR. RICHMAN: I am tryingto get answers --

THE COURT: You don't need colloquy between

you. It's not necessary in the courtroom.

MR. RICHMAN: May I have the last question read back?

THE COURT: You said, "You are a professional witness," and he said, "Yes, and you are a professional lawyer, yes."

Q Do you admit being a professional witness?

A Of course.

Q And you are being paid to be a witness?

A I am being paid so I can support myself.

Q And you are supporting yourself with the government paying for your apartment, giving you money for rent and security, feeding you, and also contributing money to your first wife and her daughter?

A That's when they were sick, when this first happened. They don't give nothing.

Q In fact, the money that you receive is tax free?

A I guess so.

Q I mean you don't have to pay a tax on it?

A Well, you know I don't have to.

Q I don't know, very frankly.

Did you file taxes on it?

A No, sir.

Q And is it fair to say that you received to date approximately $19,000 tax free in the last year or so?

A The other day it was $13,000.

Q I don't know. I'm just talking about the figures that I am given.

A I must have gotten $6,000 in the last two weeks that I don't know nothing about.

Q You want to go over these figures with me? Didn't Julie Montello and daughter get $3,389?

A I don't know what they got. I wasn't with them.

MR. RICHMAN: Will you stipulate to that?

MR. WOODFIELD: No. I will go with the witness's answer.

MR. RICHMAN: Very well.

Q You don't know what they got?

A I wasn't with them.

Q You got $13,169.45 up to August?

A That's what I said.

Q How much did you get in September?

A How much did I get in September?

Q How much did you get in September?

A $900.

Q So with this additional 900, it was 14,000;

would you say that's so?

A Yes.

Q And $3,300 to your wife and daughter?

A How would you suggest that I support myself?

Q Go out and work.

A So get me a job.

Q When you were out on the lam, as you so adequately put it, your wife joined you?

A Yes, sir.

Q She sold all the household furnishings?

A Yes.

Q And took your daughter and ran away with you?

A Yes, sir.

Q She wanted to be with you?

A Yes, sir.

Q She loved you?

A That is what she said.

Q But not too long after that you left and found someone else?

A No, I found everything out about the girl. I told you this.

Q So then you got someone else?

A Later on.

Q How much later?

A Everything I found out about the woman, don't you understand --

Q When did you find out about her?

A When I was on the lam.

Q When specifically did you leave her?

MR. WOODFIELD: I object to this again. This has been gone over numerous times.

THE COURT: I see no relevancy at this point on it any further. It has already been gone into completely.

Q Now, Mr. Montello, when for the first time did you relate these facts that you so clearly stated this morning to the Government?

A I started to cooperate April 25th.

Q I know you started cooperating.

A So I don't know what you are talking about.

Q These particular facts with relation to these alleged crimes, when did you first tell the Government about it?

A I told you April 25th I started telling them everything about it.

(Continued on next page.)

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BY MR. RICHMAN:

Q No. These -- this Courtroom, did you start telling them in April?

A I don't know. It could have been May, June, July. I don't remember.

Q We are just talking about last year. We are not talking about five or six years ago.

A I had to know what I was talking about, don't you understand. You're talking about one thing and you're trying to repeat somethi else. I don't know whatyou're saying.

Q I'm asking you a very simple question.

A I don't know.

Q Okay.

A All right.

Q Fine. Would you say your memory is better today about events last year or about events six years ago?

A I'm only talking about things I recall. I can't be specific about anything. You understand?

Q Only about what happened six years ago, that you could be specific about?

A Things I did, business with myself. Things that I did.

Q You know, Mr. Montello, I don't know what you're

talking about.

A I don't know what you're talking about.

Q Fine. Now we're together. Mr. Montello --

A Can I say something? I don't understand him. I'm being very truthful.

THE COURT: Rephrase the question.

Q Let me start again.

This morning you told us about events concerning a -- what allegedly happened at Pocono Downs. Is that right?

A These things happened. That's how I remember them.

Q Okay. You remembered with a certain degree of specificity? You understand that word?

A No, not really.

Q You were very specific as to who was in the room, who was not in the room, who walked in, who walked out. You remember that?

A You don't forget things like that.

Q You don't?

A No.

Q Okay. Tell me what happened in a conversation you had concerning those events just a year ago? When did it happen? That's all I want.

A When I start cooperating with the Government,

I told them about everything.

Q Give me a specific frame of --

A I can't. From April 25th on. That's when I cooperated with the Government about everything I did.

Q You talked every day from April 25th?

A Yes. Every day.

Q How many times do you -- did you say you went over this particular story?

A I don't know.

Q A lot of times?

A I don't know.

Q Tell me, did you go over it 50 times?

A Wouldn't be fair to answer -- for me to answer you anything.

Q You must have some recollection, sir?

A No, I have no recollection when it comes to that. I was being interviewed by the FBI and the U.S. Attorneys.

Q How many times did you discuss this with the FBI?

A This particular case? Maybe a few times. I don't know.

Q How much is a few? That's all I want to get to. Be specific.

A Two, three.

Q Two, three. How many times did you talk about it with the U.S. Attorney's Office?

A Same thing. I was getting debriefed.

Q You were getting debriefed?

A Yes.

Q In preparation for this trial, if you also go over your testimony a couple of times?

A Yes, sir.

Q How many times?

A Just once.

Q Just once? Did you discuss this before the Grand Jury?

A Discuss what?

Q Did you tell these facts to the Grand Jury?

A You know I did.

Q Fine. So you must have gone over these facts allegedly eight, ten, maybe twelve times, would you say that's a fair estimate, at least?

A No, I wouldn t say it.

Q You just said three times to the FBI. Three times to the U.S. Attorney. A couple of times in preparation for this trial. Once before the Grand Jury. That's at least nine times? Is that fair to say?

A That's your figure, right?

Q No. That's your figures.

A Your figures.

THE COURT: Don't argue with the witness.

MR. WOODFIELD: I object because the question is wrong. The answer is he only spoke to the U.S. Attorneys once and the question said three times.

MR. RICHMAN: Let the record speak for itself.

THE COURT: It's the jury's recollection. Go ahead.

Q Now, when you started to cooperate, you called that you became a human being? Did you ever say those words?

A I may have.

Q Do you recall them or don't you?

Do you recall it or don't you?

A I may have.

Q Directing your attention to the transcript, page 438. May I have a moment, sir?

THE COURT: Surely.

Q Did you ever testify that you became a human being on April 25th, when you started to cooperate?

A Yes, sir.

Q I can't hear you?

A Yes, sir.

Q And before that you were not a human being?"

A No, sir.

Q You were an animal, is that what you are saying?

A You're saying I'm an animal.

Q What were you?

A A thief.

Q A thief is not a human being?

A What is it?

Q It isn't?

A No.

Q So you were not a human being for all the 45 years of your live up until that point?

A I wasn't an animal either.

Q Now, on that date, you decided to cooperate because you were a good citizen or you became a good citizen?

A No. Because they tried to kill me.

Q Is that the only reason?

A That's right.

Q I call your attention to page 90 of the prior testimony, of another case, unrelated, by the way.

"Question: --" Line 20 -- start at line 16.

"By the way, do you claim that having lived a life of crime that you have now changed and you're a

good citizen?

"Answer: Yes."

Is that your answer?

A Yes, sir.

Q "Question: Is that why you are testifying here in Court today? Because you now have become a good and truthful citizen?

"Answer: Yes."

A Yes.

Q "Question: Is that the only reason?

Your answer: Yes.

A Because I wanted to disassociate myself with everybody.

Q "Question: No other reason at all?

"Answer: No, sir.

"Question: If the Government didn't have to subsidize you with 900 a month, you would still be testifying?

"Answer: I would still be testifying."

Is that your testimony?

A I wanted protection, don't you understand?

Q That's not what you're saying here.

A That's what I'm trying to tell you.

Q Oh, in other words, you're telling me sometning

different?

A I'm telling you what's in there and besides that.

Q Didn't you sign an agreement with the Government that you wouldn't testify unless you got complete immunity?

A I never signed no such a thing, that I remember.

Q Well, it was introduced as the first piece of evidence by Mr Coiro.

A I told you, I don't remember nothing about the Fifth Amendment.

Q Are you suggesting that the U.S. Attorney's Office would lie?

A I'm not suggesting they're lying. I'm telling you, I don't remember the incident. I remember the immunity.

Q Are you saying you never discussed immunity before you received it?

A No, I never said that either. I said I discussed immunity. But never nothing about the Fifth Amendment like you're talking.

Q Didn't your lawyer handle a deal, where you would get complete immunity?

A No, sir.

Q He didn't?

A No, sir.

Q "Question:" Page 92, "Did you have your lawyer draft a letter and bring it to the Government and ask them to sign it?

"Answer: Mr. Sonenshine handled it."

He was your lawyer, wasn't he?

A At that time, but he drafted up no letter and that was proven. You got your wires crossed.

Q You wanted to read the testimony and refresh your recollection maybe?

MR. WOODFIELD: I object. We're trying this case.

THE COURT: Yes.

MR. WOODFIELD: The same answer concerning the same events, your Honor.

THE COURT: We're still trying this one.

Q If you recall, do you remember this person Roberta referred to by Mr. Coiro?

A Yes, I remember her very clear.

Q And that was a girl you had gone out with while you were married to Helaine?

A Other people went out with her too.

Q A lot of people went out with her?

A Yes, so?

Don't open the door.

Q A lot of people went out with her but you were in love with Helene at the time, right? Yes or no?

A Yes.

Q And you took Roberta down with you to certain tracks?

A She met me there.

Q She met you there?

A Yes.

Q Did she ever lend you any money to bet?

A She loaned me and Jimmy 2,000.

Q Did you ever pay it back?

A No.

Q You beat her for it?

A I didn't beat her. Never got in touch with her no more. Never seen her.

Q You didn't bother paying it back?

A She didn't bother looking for me so I didn't pay.

Q She borrowed that money, she signed for it from a bank, isn't that a fact?

A I don't know.

Q You know. A bank in Long Island?

A You're telling me something new. I didn't know nothing about it.

Q We'll get to that.

A She was other people's girlfriends, too.

Q You had indicated on direct examination when dealing with the particular events concerning the testimony this morning that you remembered the jockeys that you fixed?

A Excuse me. I didn't hear you.

Q If you'd listen -- I'm sorry. I withdraw that.

You had indicated that you remembered the names of the jockeys you fixed?

A Yes, sir.

Q Because you were able to fix them?

A Yes, sir.

Q You had worked at other tracks and you tried - and you fixed a race at Charlestown?

A Yes.

Q What was the name of the jockey you fixed?

A Smith.

Q What is his first name, John?

A I forget his first name.

Q Smith. What race was it?

A It was in the Exacta race too.

Q When?

A The '70s, I guess.

Q In the '70s?

A Yes.

Q '72, '73?

A I just can't fix a time.

Q Can't fix the time?

A No.

Q Did you tell the U.S. Attorney's Office about Mr. Smith?

A No.

Q You forgot about that?

A Because nothing happened.

Q You tried to fix it?

A But nothing happened.

Q You know a fellow by the name of Tommie Lee?

A Tommie Lee?

Q Yes.

A Not offhand.

Q Do you know a jockey named Tommie Lee?

A No, not offhand.

Q Do you know a jockey named Tommie?

A Tommy Mada.

Q Tommy who?

A Mada.

Q And he's a friend of yours?

A Yes, sir.

Q He's a friend of yours from one of these tracks in Maryland, is it? Or Delaware?

A Delaware, Dover Downs.

Q Dover Downs. Did you ever try to fix a case at Dover Downs?

A A case?

Q A race, case, what's the story?

A Yes.

Q You did?

A Yes.

Q And did you fix it?

A No.

Q Did you tell the U.S. Attorney's Office about it?

A Nothing to discuss. Nothing happened.

Q Was Tommy involved in it?

A What?

Q Was Tommy involved in it? In an attempt to fix a race?

A We tried to, but nothing materialized.

Q And he's a jockey?

A Yes.

Q When was that?

A I don't recall.

Q Was it before or after Pocono Downs?

A I believe it could have been before. I'm not sure.

Q It could have been but it could have been after?

A It may have been. I don't know. I'm not too sure about that.

Q How many times did you go to the track in the last ten years?

A Quite a bit.

Q Hundreds?

A Maybe thousands.

Q Maybe thousands. And each and every event at these tracks and every winnings were big winnings, do you recall?

A I don't understand what you mean by big. When I make a legitimate bet and I win money or when I fix a race?

Q When you fix a race.

A Pocono Downs I fixed a race and won money.

Q That's the only one you fixed?

A Yes.

Q Mr. Montello, you're a user of people, aren't you?

A No, I'm not.

Q Well, for example, you knew this girl Roberta?

A Yes.

Q And you know you were married?

A Yes. So did other guys know.

Q You hustled her for $2,000?

A So did other guys hustle her.

Q She was to be hustled?

A Yes.

Q To be used?

A Right. By a lot of people in the Bronx.

Q You used her?

A Yes. So did other people.

Q That made it all right, didn't it?

A What? Sure it did.

Q Now, Mr. Feder, you used him too, didn't you?

A I used him?

Q Yes. You used him to cash in those tickets?

A I never used him.

Q Did you give him any money?

A No.

Q Did you give him any percentage of your winnings?

A He wasn't my friend.

Q Oh.

A I didn't bring him there.

Q So he was not even part of that deal? He was

not getting a cut?

A Me, I wanted to give him something. He says I'd take care of it, Vinnie.

Q Do you know if he did?

A What do I know? I take care of my people.

Q Santa Maria was your people?

A Yes.

Q You gave him $17,000?

A That's right. That's right.

Q You gave $500, you said, to Mr. DiNapoli's father?

A Yes, sir.

Q That wasn't your people?

A Regardless. I liked the man.

Q You liked the man. You gave $500 to Mr. DiNapoli's cousin?

A That's right.

Q And you gave nothing to Mr. Feder?

A That was because Vinnie says he'd take care of it.

Q And Mr. Feder signed his own name on the tax vouchers?

A I didn't tell him to.

Q He did it?

A But I didn't tell him to.

Q Did you particularly care for Mr. Feder?

A Sure, I liked him.

Q You liked him?

A I like Eddie.

Q Didn't you call him a skunk?

A Skunk?

Q Yes. Or words to that effect?

A I don't know.

Q Didn't you tell him, get away from me, I don't even want to be seen with you? Did you say that once to him?

A I don't know.

Q Did you discuss anything in Italian with Mr. Feder?

A He's a Jew. How can I talk Italian?

Q You spoke Italian, you say, to Mr. DiNapoli?

A He's Italian.

Q You know Mr. DiNapoli doesn't speak Italian?

A HE understands it pretty good.

Q But he doesn't speak it?

A He does when he wants to. You want to make faces?

Q Let's start talking about these events that occurred on or about October the 12th or thereabouts. Is it

17a

your testimony that you received a telephone call from Mr. Davis, a jockey?

A Yes, sir.

(Continued next page.)

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GR:KG

Q He said, Hi, Sonny, let's fix a race, or words to that effect?

A He says we are ready to do business. Do you want to come down.

Q Was that the first time you did business with Mr. Davis?

A No. I spoke to him through -- I spoke to him through Lou Comi to do business with him.

Q Louie who?

A Lou Comi, another jockey.

Q Was he another jockey you had fixed?

A Yes, sir.

Q When did you fix Mr. Comi?

A He didn't participate in it.

Q Did there come a time at sometime in your life that you fixed Mr. Comi?

A No, sir.

Q No?

A No.

Q But he knew that you were interested in fixing?

A Yes, sir.

Q Is it standard operating procedure in the -- this was a trotter, was it not?

A Flats.

Q This was a flat?

A Yes.

Q Pocono was a flat?

A Yes.

Q Oh, thanks. Was it standard operating procedure in this kind of race track to have the jockeys fix races?

A They all do.

Q Is this standard operating procedure in the sport?

A Not in the sport. All the half mile tracks they do.

Q So everybody is going around fixing?

MR. WOODFIELD: I object, Your Honor. That's very argumentative.

THE COURT: Yes.

MR. RICHMAN: I don't know about these things, Your Honor.

MR. WOODFIELD: I don't know whether this is the opportunity for Mr. Richman to learn here.

MR. RICHMAN: We all have to do learn sometime.

THE COURT: Let's stay with the facts.

Q Now, you had discussed during the course of your soliloquy the fact that you had several meetings concerning these events prior to the alleged fix taking place,

is that correct?

A Prior meetings when?

Q I'm sorry. Prior meetings when? Prior meetings before?

A The day, at the Holiday. That's when we fixed them.

Q Now, October 14, you allegedly had a meeting?

A Had a meeting every day at the Holiday Inn.

Q Do you remember the meeting you had October 14?

A Vaguely.

Q Vaguely? Which meeting was that, by the way?

A The exacta that night.

Q How much did you win that night?

A Either 55 or 85. I don't remember.

Q Couldn't have been twenty-eight thousand, could it?

A No. It was the first night.

Q What?

A The first night was the twenty-eight thousand.

Q That's October 14. That's what I'm talking about?

A That's the twenty-eight thousand then.

Q Oh, okay. Was Mr. Feder there?

A No, sir.

Q Was he at any of the meetings in the room with you while you were discussing fixing?

A He was in the adjoining room next door. He come --

Q He was in the adjoining room with Mr. Louis DiNapoli who was not part of this?

A The father?

Q Yes.

A Never says he was part of it.

Q You never said he was part of it?

A No.

Q And Mr. Feder was inthe same room with the man who wasn't any part of this?

A But he used to come in and out.

Q Do you know if he heard any of the conversation that was not directed obviously towards him?

A Yes. About him cashing the tickets he was going to cash the tickets.

Q And this was discussed on October 14?

A No. October 14 is the first night, the twenty-eight thousand.

Q Yes --

A Tell me the amounts, then I could tell you the dates.

Q Okay. On the twenty-eight thousand day, was Mr. Feder there?

A No. He arrived the next day.

Q In fact, Mr. Louis DiNapoli cashed in the tickets?

A Right.

Q He was not involved?

A Who, Mr. Feder?

Q No. Louis DiNapoli.

A No, he wasn't.

Q But he cashed in the tickets?

A Yes.

Q He did the same thing that Mr. Feder did?

A Yes.

Q You say that Mr. Feder was involved?

A Mr. Feder knew what he was doing.

Q Did you tell him?

A Vinnie told him.

Q Did you tell him?

A Vinnie told him.

Q Did you tell him?

A What? Did I?

Q Yes or no, did you tell him?

A I didn't tell him to do nothing.

THE COURT: We will recess at this point. Ten minute recess.

MR. RICHMAN: Your Honor, may I respectfully request -- I'm getting dry. Could we go ten minutes more. I'll finish this section and maybe adjourn for the day.

THE COURT: No. I won't adjourn for the day. There is no reason to adjourn for the day.

MR. RICHMAN: Okay.

(recess taken)

(the following occurred inthe absence of the jury)

THE COURT: All right. Let's proceed.

Seat the Jury please.

(jury present)

THE COURT: All right. Bring in the witness.

CROSS EXAMINATION

BY MR. RICHMAN:

THE COURT: All right.

MR. RICHMAN: May I Your Honor?

THE COURT: Surely.

Q Mr. Montello, this alleged fix was conceived planned and implemented by yourself, is that correct? You were the prime mover?

A Yes, sir.

Q So to say?

A Yes, sir.

Q And it is then that you sort of called in other persons?

A Yes, sir.

Q Because you wanted them to assist you?

A I needed the money.

Q You needed their money?

A Right.

Q And How much money did you get from Mr. Santa Maria?

A Nothing.

Q And how much money did you start with, did you have?

A Nothing.

Q And how much money did you get from Mr. DiNapoli?

A Four thousand.

Q Didn't you testify this morning that on the first day after the first win you sent Mr. DiNapoli's cousin back to the Bronx with money?

A That was the following day, after we cashed the ticket.

Q Cashed the ticket and you sent him back?

A Yes.

Q You took a bigger portion because you put in more money, isn't that what you said?

A No. I had laid out a thousand more from the fruit store I had, between me and Jimmy.

Q Wait. Didn't you say just now that you didn't start with any money?

A This was the winnings we cut up. I took an extra thousand because I had laid out a thousand when I had the fruit store. Between me and Jimmy.

Q What does that have to do with the race track?

A Nothing but I had another thousand coming from the store that I had laid out for something else, for other things.

Q Did you take it from Jimmy's portion?

A Yes, sir, from both of them.

Q In other words, you are saying that those other persons were relying on your expertise and your knowledge to benefit, is that what you are saying?

A Well, I was making the connection, if that's what you mean.

Q You were making the connections and you were placing the bets. You knew all about the horses?

A We were all making the bets.

Q Did you bet on any other race other than the exacta?

A Might have bet a few dollars in between just to hang around.

Q What time would you get to the track?

A It was night racing.

Q What time would you get there?

A Get ther for the doubles, to fool around.

Q You'd bet for the first race?

A Sometimes.

Q Second, third, fourth?

A Sometimes.

Q You spent money?

A Yes. Tens, twenties.

Q Did you have any other winnings?

A Excuse me?

Q Did you have any other winnings?

A Yes. But nothing to talk about.

Q The night you won $5,000. how much did you bet in order to win the five thousand, not bribe, how much did you bet?

A It's back to a wheel again. It's hard to figure out.

Q You've been using the word wheel. What is

a wheel?

A You bet to wheel all the combinations.

Q Could you explain to the jury what that means?

A I explained before. I put it down on a paper.

Q Does that mean -- your having it on the paper didn't show it to the jury. Does that mean that in the sevent race because an exacta is the seventh and eighth races, you bet various combinations of horses in various amounts?

A In other words, you'd have to take the one, the four, like say fifteen, twenty times. The four and the one, fifteen, twenty times. You would have enough combinations to go into eight races, tie up the whole eight races.

Q So it wasn't really a fix so to say? It was really you were eliminating the -- or lowering the odds?

A --

Q You didn't know who was going to win?

A It knew the favorites weren't going to win.

Q The favorites always win?

A The favorites weren't going to win.

Q So just opened up the other -- if it was ten horses, the other six horses to win?

A Right.

11

Q So what you were really doing was reducing the odds to lose, rather than knowing who was going to win?

A No. You would eliminate people that were using the favorite.

Q Did you know who was going to win?

A Anybody could have win out of the six but anybody that anybody that won we had.

Q So, in other words, you knew six horses -- one of six horses were going to win and you bought all six horses? On the tickets?

A All different combinations you buy, right.

Q You didn't know who was going to win?

A No, sir.

Q You were gambling to that extent?

A You gambled but the favorites are out of the money.

Q In other words, you were just raising the odds that you would win?

A So to speaking, yes.

Q Can you tell us, on October 15, that's the five thousand night, how much you bet in order to win the five thousand?

A I -- I can't remember that. It's hard to figure it out. That's the night the favorite won too, I

think.

Q You had indicated that you only fool around in terms of betting on that particular date? Is that right?

A Yes.

Q I show you these documents. Does that refresh your recollection as to how many tickets you purchased?

A Not really.

Q On that particular date, for race number 7 on October 15, 1970?

A Not really.

Q Does that -- doesn't refresh your recollection?

A Could be anybody's tickets.

Q It could be anybody's tickets?

A Pick them off of the floor too.

Q In anticipation of this trial?

A Sure.

Q Six years ago?

A He says he was going to pick them up off the floor anyway for the taxes.

Q In combinations of six and one, eight times; four and two, eight times?

A I found them all over the floor, Your Honor -- counselor.

Q You did admit that you bought a number of tickets?

A Of course.

Q In various combinations?

A Yes.

Q Ten dollar tickets or two dollar tickets?

A Two dollar tickets.

Q Could you please take your hand away from your mouth?

A I'm sorry. Two Dollar tickets.

Q You didn't bet any ten dollar tickets?

A I doubt it.

Q Do you know or don't you know?

A I says I doubt it. I don't remember.

Q Isn't a ten dollar ticket just like five twos? It's the same thing?

A I don't remember if they had the exacta there -- ten dollar exacta.

Q How much did you invest on the seven races?

A Nine hundred fourteen dollars. I put it down.

Q Nine hundred fourteen dollars?

A On the $28,000. one I believe it was.

Q That's on the seventh race?

A Yes, sir.

Q And how much did you bribe the jockeys? How many jockeys were involved on that particular date?

A Five or six.

Q Five or six?

A Yes.

Q And they each received three hundred?

A Three or five.

Q Three or five. So a minimum of $2,000., $3,000. was spent bribing jockeys?

A Yes, sir.

Q Was that to each race?

A Two races.

Q So they received three hundred for one race and three hundred for the second race?

A Yes.

Q So we have six jockeys receiving six hundred apiece, thirty-six hundred at least?

A Give or take a little.

Q Plus the $918. you bet?

A Yes.

Q Comes to $4518., right?

A Yes, sir.

Q In other words, you bet $4518. to win five thousand?

A No. Not on that race.

Q What?

A Not on that race.

Q Isn't that what you just told us?

A No.

Q What did you just tell us?

A Your -- I don't know if you are talking about one race or the others.

Q I'm talking about October 15. Nothing more?

A I don't know what I bet and don't lift your voice to me.

Q Why not?

A What? Because --

Q Who are you?

A Who are you?

MR. WOODFIELD: Your Honor, I object.

THE WITNESS: Who are you

THE COURT: That's all. He's the lawyer trying the case and you respect him as a lawyer in this Court.

THE WITNESS: I'm trying to Your Honor.

THE COURT: He is an officer of this court and you will respect him.

THE WITNESS: I'm trying to.

15a

THE COURT: You respect him as an officer of the court, as the Government lawyer is an officer of the court and the other lawyer is an officer of the court and you respect them as such.

All right.

(cont'd on next page)

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BY MR. RICHMAN: (Cont'd.)

Q Mr. Montello, is it your testimony that you don't recall how much you bet or that you don't recall how much you bribed?

A It's hard to say, Mr. Fisher. It's hard to say. You would have to sit down with pencil and paper and figure out every race, every -- every combination.

Q That's what it's all about, sir?

A This is it. That's what I'm trying to say.

Q We're dealing with human beings here.

A I know we are.

MR. WOODFIELD: I object to Mr. Richman's answering or summing up.

THE COURT: Disregard it.

Q Mr. Montello, you admit that you gave five or six jockeys in this particular race $300 or $500, depending upon the jockey, per race?

A Is it all right if I look over here?

Q Please do.

A What race are you referring to?

Q October 15th, seventh race.

A What page would that be on?

Q It should be on Page 7, if I am not mistaken. It could be six or seven. Does that refresh your recollection,

sir?

A This is the race where I'm telling you where the favorite won.

Q That's where the favorite won?

A Right. We couldn't reach the favorite I'm telling you.

Q Fine. Whom did you reach in that race?

A Davis, Fromal and Wholey.

Q Beg your pardon?

A Davis, Fromal and Wholey.

Q Not Sage, not Laucirica, not Surrency?

A Not in there.

Q So you have those three fellows you reached? At three to $500 each? Is that right?

A It could have been $300, right.

Q So between nine and $1,500 spent for the seventh race to fix it? How about for the eight races, whom did you reach in the eighth?

A Davis and Laucirica.

Q Davis and Laucirica. That's another thousand or thereabouts?

A Yes. Roughly.

Q That's around -- between 1,900 and $2,500, just on the fixed portion?

A We was afraid of the favorite in there, don't you understand?

Q I'm trying to understand.

A I know but it's hard to explain to you what I'm trying to bring out.

Q Now, Mr. Montello, please asnswer my question. Just my question. Nothing more.

A If I could answer your question I would answer.

Q Do you know how much you bribed these people?

A Sometimes they get five. Sometimes --

Q How much did you spend in that race? I'm trying to get to that. That's all.

A I'm trying to remember. I don't remember that race. I just don't remember how much I laid out in that race.

Q You handled the bribing, didn't you?

A I just don't remember what I laid out.

Q So would you say it's a fair estimate between 18 and $2,500? Is that a fair estimate?

A Yes, I guess so. Roughly.

Q And you put in $900 to bet, $918 you say?

A The other race.

MR. WOODFIELD: I object, your Honor. He's

not dealing with the same race.

Q What -- how much did you bet on that race, if you will?

A I don't remember. You got to make a wheel, Mr. Fisher.

Q A wheel?

A You have to figure it out.

Q A wheel means you have to bet various combinations?

A You have to bet all the combinations and have enough winning tickets to go into the next race.

Q So in other words, if you had a combination eight and four, meaning the eight horse and the -- from the first and the fourth race for second, you would have to bet at least the number of times as the next number of races?

A You'd have to take the four with the eight and the eight with the four.

Q But how many times each?

A You'd have to figure out how many times you'd need it to go into the next race.

Q If you had ten races in the next race and you wanted to bet all ten, you'd have at least ten combinations of each number?

A I don't know.

Q Wouldn't that be correct?

A No.

Q Let's say you wanted to take a full wheel, a full wheel? You bet every combination that you were figuring?

A It's hard to explain, don't you understand?

Q Would you bet one number, like an eight and four combination more than once?

A No, I wouldn't.

Q You wouldn't?

A No.

Q And the seventh race you wouldn't bet it more than once?

A I -- I would take, for argument sake, the one and the two, right?

Q How many times did you buy it?

A I might have to buy it 15 times because I would need 15 winning tickets to go into this combination in the eighth.

Q That's the point I want to make.

A I didn't know that.

Make it clear.

Q You wouldn't just take one? You would take

as many possibilities as there were not fixed, wouldn't you?

A You wouldn't use the dead horse, is that what you mean?

Q Right.

A Right.

Q So if there were like ten horses in the race and there were -- seven horses that were alive, you would have to bet at least seven different combinations of those horses?

A Some -- sometimes.

Q Sometimes?

A Right.

(Continued on next page.)

CROSS EXAMINATION

T 3 pm
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BY MR. RICHMAN (Cont'd):

Q So you would have to bet, let's say a one and four combination, 15 times, a two and four combination, 15 times?

A Right.

Q A three and four -- a four and three combination, three or 15 times until all the possibilities are worked out?

A Right.

Q And that would take a substantial amount of money?

A Right.

Q So when I suggest the possibility of investing $4,500. to make $5,000., I was not being off-hand, was I? It's conceivable?

A I would say about $3,000.

Q So in other words, you invested about $3,000., to the best of your recollection, to make $5,000.?

A Yes, hoping that the second half would come back big, because the second half was fixed.

Q Thank you, that is just what I was trying to get to.

A I didn't understand you, I'm sorry.
Q Mr. Feder did the betting?
A He went and bought tickets.
Q For you?
A For all of us.
Q But you gave him the odds?
A We all gave him the odds.
Q You gave him the odds?
A He's Vinny's friend, I never gave him the odds.
Q You didn't tell him anything, Vinny told him everything?
A I make out the combinations and handed it to them and you would just split it up.
Q You would make out the combination and you would pass out the work?
A And I'd go myself, too.
Q Mr. DiNapoli senior was present during this time as well?
A Excuse me?
Q Mr. DiNapoli senior was also present at this time?
A Sometimes.
Q Yes. And he would also cash in tickets

for you occasionally?

A He cashed in only one ticket for me.

Q Didn't you tell me he cashed in the $11,000. winner on the Ninth Race on October 17th?

A Cashed a $28,000. one and then the exacta in the last race that night, I cashed some. He cashed some and Jimmy Santa Maria cashed some.

Q So Mr. DiNapoli did --

A Maybe $50. worth.

Q $50. worth exactly what?

A Of $113. exacta.

Q That would come to approximately what?

A $600. and something.

Q $600. or $6,000.?

A $50. worth, about $113..

Q 50 times -- isn't it 50 times $113. or 25 times?

A 25 times.

Q Okay. $2,500.?

A No.

Q 25 times $113. is at least $2,500.?

A I'm sorry, you're right, I'm sorry.

Q Mr. DiNapoli senior use his own name?

A He didn't have to sign that.

Q He used it to --

A Big exacta is the only time you have to sign your name.

Q Mr. Feder used his own identification and everything else?

A Yes.

Q As you indicated, Mr. Feder was never present during the course of these meetings?

A He was in the room, he knew what was going on.

Q You testified this morning that you had a meeting on the 14th at the Holiday Inn?

A He wasn't there.

Q He wasn't there. On the 15th, did you ever say that Mr. Feder was present?

A He was there. He was also there, you understand? He knew what was going on.

Q You testified before the grand jury on October 7, 1975?

A Yes, I did.

Q Did you testify with relation to these particular events?

A I guess so.

Q Did you at anytime, throughout the whole

testimony of that grand jury and I refresh your recollection by offering it to you, at any time, mention that Mr. Feder was present at any meeting and don't you mention everybody else's name but Mr. Feder's?

A Maybe I do, maybe I don't.

Q Do you or don't you?

A Maybe, I don't -- I'm not arguing that I mentioned his name.

Q Was he there or wasn't he?

A I remember him being in the room.

Q In and out?

A Yes.

Q Was he participating in your conversation?

A No, not in the handicapping and stuff like that, no.

Q Did he participate in any of the fixing?

A No.

Q Your answer is no, right? May I have that, please? In fact, in the grand jury, isn't it a fact that the only thing you have Mr. Feder doing, is cashing your tickets?

A Cashing in our tickets.

Q Our tickets, but he was just cashing in tickets?

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A Our tickets.

Q Using his name, his identification, his signature?

A Right.

Q Did you cash in any tickets in your name?

A No, sir.

Q You didn't want to get in trouble?

A Excuse me?

Q You didn't want to get in trouble?

A I didn't want to see anybody get in trouble.

Q You didn't want to cash in anything in your name?

A I didn't want to see nobody else do it either.

Q You were sending other persons to cash in tickets?

A You asked me that before and I'm going to tell you again, I didn't send nobody to cash no tickets. I bring Eddie Feder there.

Q I direct your attention to October 16th, that is the $8,000. winner, if I am not mistaken, in the Seventh Race, you had -- testified that you bribed Sage, Sorensi, Wholey, Laucirica and Davis?

7 A What page is that?

Q It's after page seven, it might be nine or ten.

A Yes.

Q You bribed five people for the Seventh Race? You gave them a minimum of $300. to $500. each, for that race?

A I don't believe I said five people in that race.

Q Sage, Sorensi, Wholey -- I can't pronounce his name, Laucircia and Davis?

A I mentioned Wholey's name?

Q You certainly did, I thought so.

MR. WOODFIELD: I object, your Honor. It is a witness' recollection.

MR. RICHMAN: No, it is the jury's recollection.

Q So it is about five people you bribed in that race?

A I may have.

Q About three to five hundred each?

A Sometimes you could get a deal two to five hundred, sometimes.

Q Bargain rates?

A Who?

Q I am, the jockeys would give you a bargain sometimes? Your bribing me last race, I'll give you a discount?

A They were making a lot of money.

Q They were making a lot of money with you?

A Yes.

Q They liked you?

A Right, I treated them good.

Q You treated them good?

A Yes.

Q You bribed them nicely?

A Mr. Fisher, everybody was on the bribe.

Q Everybody was in on the bribe?

A Everybody.

Q Everybody?

A Everybody.

Q The judges too?

MR. WOODFIELD: Your Honor, I object.

A I didn't say that.

THE COURT: That is uncalled for.

MR. WOODFIELD: That is absurd.

MR. RICHMAN: I'm talking about the race track.

MR. WOODFIELD: The --

THE COURT: Still uncalled for.

Q How many people did you bribe in the Eighth Race on that date?

A I think, Fromel.

Q Beg your pardon?

A I believe it was Fromel and I believe, Lucas.

Q Fromel and Lucas, the only two?

A I think so, yes.

Q Could it have been more?

A I don't think so.

Q Would it be fair to say you spent about $3,500. bribing that race?

A I don't know, I can't -- I can't explain that to you. I would have to sit down with a pencil and paper and try to explain this to you. I haven't got figures in my head.

Q How much did you spend betting?

A I don't know.

Q Say about $900. to $1,000., is that a fair estimate?

A Maybe. Maybe $1,100.

Q Approximately $4,500. to win $800. would

be a fair estimate, $8,000.?

A $8,000., could be possible.

Q Did Mr. Feder benefit in any way from the proceeds that you saw?

A I don't know, I can't answer that.

Q Did you see him get any money? Did you give him any money?

A No, sir.

Q Did you see him get any money?

A No, sir.

Q By the way, during the daytime at these events, did you -- what did you do? When you had to fix the race that night, what did you do during the daytime?

A We'd hang out in the room.

Q Did you ever go to any other track?

A From Pocono? No.

Q Did you ever go down to Atlantic City during that period of time?

A That was another time. I didn't go, I sent Jimmy there.

Q You sent someone else this afternoon?

A Not that afternoon.

Q I direct your attention to the 17th, did you go down to Atlantic City to bet?

A No, sir.

Q Beg your pardon?

A No, sir.

Q Did anybody who was with you go down to Atlantic City to bet?

A Not at that time.

Q I beg your pardon?

A Not at that time.

Q Did anybody during the days from the 14th to the 17th of October, go any place else to bet?

A I say to you, no, not at that time.

Q What about right after, the meet ended at Pocono, do you know, did you go anywhere to bet?

A I went many places after that.

Q Did you go to Charlestown?

A Yes.

Q And did you bet there at Charlestown?

A Yes, sir.

Q Did you lose at Charlestown?

A Yes, sir.

Q In other words, you just move from track to track and bet?

A Yes, sir.

Q And you won sometimes and you los some-

times?

A Right.

Q And in fact, immediately after this meet, you and some of the person you have already mentioned, went to another track?

A Yes, sir.

Q Charleston?

A Yes, sir.

Q And you lost?

A Yes, sir.

Q Is it fair to say you were a full time gambler, aside from being a partime crook?

A I also said that.

Q You also said that?

A Yes.

Q For example, was Mr. Feder present when you gave Fromel money?

A I don't think so. I'm not sure.

Q You don't think so?

A No.

Q By the way, Mr. Montello, you're not in custody now, are you?

A No, sir.

Q You're free?

A Yes, sir.

Q You have been free for almost a year now, if not more?

A Yes, sir.

Q You were sentenced to seven and a half years. How much time did you actually serve?

A About 13 and a half months.

Q About 13 and a half months?

A Yes.

Q This is for bank burglary?

A Yes.

Q And then they reduced the sentence?

A Yes, sir.

Q And then you made certain admissions about these hijacks and you were never prosecuted, you have gotten that, is that right?

A Yes, sir.

Q You are living in a place and don't tell me where, I don't want to know.

A I'd never tell you.

Q I'm not interested. You are living there with another person who is also in the same situation your in, right? The same town, wherever that may be?

A I don't know if that calls for an answer.

Q This fellow Tutti, he's with you, isn't he?

A I don't want to answer that.

MR. WOODFIELD: Your Honor, I object. I don't see any relevance to this.

THE COURT: What is the relevance?

MR. RICHMAN: Your Honor, just to see that his partner is in the same situation he's in. His partner, the one we spoke about before.

MR. WOODFIELD: I don't see the relevance to this case at all.

THE COURT: It is not relevant.

MR. RICHMAN: I believe it is relevant. May I be allowed to proceed with the questions, sir?

THE COURT: No.

MR. RICHMAN: May I have a moment, sir?

THE COURT: Surely.

BY MR. RICHMAN:

Q Mr. Montello, I'll be brief with you now. Did Mr. Feder leave with you when you left the meet?

A Excuse me?

Q Mr. Feder leave with you?

A No, sir.

Q In other words, on the night in question,

he picked up the $48,000.?

A Yes, sir.

Q Took it back -- he hired two armed guards to protect him?

A Yes, sir.

Q Took it back to his motel room?

A To the Holiday Inn.

Q You proceeded to give out what money you wanted to?

A I stayed there for the night.

Q But he didn't get anything, that you saw?

A I don't know.

Q Did you see him get anything?

A He didn't seem to get nothing.

Q Just a question. The Government didn't get you your girl friend?

A What?

MR. WOODFIELD: I object to that, your Honor. That is outrageous.

THE COURT: Yes, all right.

MR. RICHMAN: I'm --your Honor, the --

MR. WOODFIELD: I object to this -- continuous comments by Mr. Richman.

MR. RICHMAN: No further questions.

THE COURT: All right.

MR. WOODFIELD: I have nothing further. Thank you very much.

THE COURT: You may step down. Thank you. Step down. All right, I think we will recess. We will recess now until tomorrow morning at about 10:15. We should be able to start then.

MR. WOODFIELD: Your Honor, with regard to the time, could I speak at side bar for a minute? I might be able to bring something to your attention, it might be relevant.

THE COURT: Okay.

(At side bar)

MR. WOODFIELD: Your Honor, I don't think it was fully discussed with counsel, but in any event, my next witness who is Jimmy Davis, the driver, I realize now was shown photo spreads at times with regard to some of those individuals and selected them out. We have never really discussed in depth this. If they had wanted to have a Sirmon's hearing, I have no objection to having that briefly before the jury comes in.

THE COURT: I'll bring them back at 11 o'clock.

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(The following occurred in the absence of the jury.)

THE COURT: Good morning, gentlemen.

All right. I understand someone wants to make some kind of a statement in reference to -- the certificate of relief of disability? Anybody want to make that statement?

MR. VICTOR: Yes. I'll be there in a minute.

THE COURT: Yes. I'll tell you, I've researched that, relying on -- first of all, it was in the Correction Law.

MR. VICTOR: I tried to correct that this morning.

THE COURT: On Monday I found it in the Correction Law.

MR. VICTOR: Thank you very much, your Honor.

THE COURT: Secondly, the case that's absolutely controlling, as far as I am concerned, is the DeGrosso versus Goodman involving the very same thing, except it happened to be whether or not his --

MR. VICTOR: That's whether the Court can issue --

THE COURT: Yes. That was a federal situation. I understand that.

MR. VICTOR: Yes.

THE COURT: That's not the reason why I'm citing the case. That was written by Charles Tierney, who is in my estimation a very excellent Judge. It seems to me and if you want to argue, you can --

Go ahead.

MR. VICTOR: Yes. I would call your Honor's attention to Sec. 702 Subdivision 2 of the Correction Law, which states that the certificate which is issued under that law should not and cannot be issued by the Court unless the person is rehabilitated.

THE COURT: Well, that's what it says.

MR. VICTOR: I believe it does say that.

THE COURT: This --

MR. VICTOR: In view of the fact that it cannot be issued unless the person is rehabilitated, I now go back to Sec. 609 of the Federal Rules, Subdivision C. It says,"Evidence of a conviction is not admissible under this rule if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation or other equivalent procedure, based upon a finding of rehabilitation of the person convicted."

Now, I say that that is an equivalent

procedure. It's as equivalent a procedure as you can get under the law.

There is a certificate issed by a Court, relief from disability which cannot be issued under the law, cannot be issued unless the person is rehabilitated.

THE COURT: But they talk about rehabilitation in a different vein than you are using it. Certificates that's been given has been given merely for the fact of gaining employment of some right that's been lost is not rehabilitation and the definition of that can be found in several books, one of which is Judge Weinstein in his book on admissibility of this type of certificate. Pretty much spells out --

MR. VICTOR: It's so critical an issue --

THE COURT: I know.

MR. VICTOR: I say it's --

THE COURT: I must determine it in the vein of which the law will permit either to declare it inadmissible or admissible, either way.

MR. VICTOR: Your Honor, I say that -- in this particular instance, I think you should lean in the favor of the defendant, not the people on the issue.

First of all, the law 609 does not require an identical certificate.

THE COURT: I understand that.

MR. VICTOR: True. The certificate that is issued is for civil disabilities, for jobs or bars. But it specifically states that there must be rehabilitation.

Now, your Honor, if there must be rehabilitation, I say that is at least an equivalent procedure. Under United States against Luck prior to the enactment of this law, the Court had a total discretion in this regard and that discretion was exercised quite liberally because the Courts felt that it was more important for the truth to come out, for the jury to hear the truth and to hear the defendant, rather than have them affected by the prejudicial effect of a conviction.

Your Honor, we're dealing with a misdemeanor conviction. We have certificate which is equivalent to rehabilitation. It is so important to this man's liberty, it is so important to justice and truth that this jury hear him, that I would ask your Honor to exercise some discretion in his favor and I call your Honor's specific attention to United States against Luck.

MR. WOODFIELD: May I be heard briefly?

MR. VICTOR: I'll give the Court the citation of United States against Luck.

THE COURT: I'll give both sides a chance to talk.

MR. WOODFIELD: I don't think Luck has any applicability since the Federal Rules of Evidence have been put into effect after Luck.

MR. VICTOR: If your Honor -- if your Honor is familiar with the United States against Luck, you know that before the amendment, the Court had absolute discretion and the rationale was that it was more important for the jury to hear the defendant than not.

I am saying, I am not saying --

THE COURT: But I don't view -- unfortunately it may be -- I don't view a certificate of relief from disability in the same vein that you are viewing it. You are discussing with the Court that it is almost equal to a pardon of some type.

MR. VICTOR: No. Absolutely not.

THE COURT: All it did was give the man a chance to get a job if that's what he was looking for or if he wanted to vote and he was being prevented from voting he could go in and get a

certificate of relief from disability.

But the underlying conviction, all the other things that are part of it, have never been removed.

MR. VICTOR: 609-C, it doesn't talk about -- pardon is one aspect. It's saying an equivalent procedure based upon a finding of rehabilitation of the --

THE COURT: I'll ask you this: Where is the finding in this case that would indicate that the Judge, whoever issued the certificate, and I can't for sure, look now behind a certificate and hold a hearing to find out whether he was considering rehabilitation.

MR. VICTOR: No, your Honor.

THE COURT: I can't substitute my judgment for his judgment.

MR. VICTOR: I'm not saying we have to have a hearing.

THE COURT: He may have found it just to let him go to work.

MR. VICTOR: He can't issue it. 702 says it must be on rehabilitation.

(Continued on next page.)

THE COURT: Let's find out whether it can not --

MR. VICTOR: 702, Subdivision 2.

THE COURT: Judge Tierney says in his decision and it's the only one I found, the granting -- this is page 505, Subdivision 5, starting in the middle of the paragraph, the granting of a certificate of relief from disability in no way eradicates or expunges the underlying conviction. It does prevent the mandatory forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election. The prevention of such mandatory forfeiture is a matter which falls squarely within the matter of the state and its citizens, et cetera. But he says succinctly what I'm saying to you, that you must show me, if you have a -- a decision from a Judge that said, we issued this not because of the disability to get a job or the right to vote or give him back a franchise, but to show that he's actually rehabilitated for the purposes of all other than receiving a pardon, that would be something different. I cannot exercise my discretion in the underlying idea of another Judge.

MR. VICTOR: May I borrow the correction law for one moment.

THE COURT: Surely. Here it is. Look at the

back because it's been amended. Some words were taken out.

MR. VICTOR: Yes, sir.

MR. WOODFIELD: May I be heard briefly on this now?

MR. VICTOR: Let me finish the thought, please. Thank you.

THE COURT: Excuse me.

MR. WOODFIELD: I want to be heard.

THE COURT: You'll be heard.

MR. VICTOR: Your Honor, Subdivision 2 of Section 702, such certificate shall not be issued by the Court unless the Court is satisfied that Subdivision B, the relief to be granted by the certificate, is consistent with the rehabilitation of the eligible offender.

THE COURT: Consistent with, right. I read those words.

MR. VICTOR: We don't need a hearing. We don't have to go behind. It shall not be issued unless he is rehabilitated.

THE COURT: No.

MR. VICTOR: Consistent with his rehabilitation.

THE COURT: The reason why she uses the word shall because it is not an absolute.

MR. VICTOR: Shall is absolutely mandatory. It is not may. It is shall. Shall is must under[redacted] the law, under[redacted] the definition.

THE COURT: All right. I had the wrong word. Okay.

MR. VICTOR: We don't need a hearing. We know that this certificate has been issued based upon a finding of rehabilitation of this man. It's so important for that jury to hear him and the prejudicial effect of hearing about a misdemeanor conviction under these circumstances far outweighs the probative value of his testimony, your Honor. And I'm saying that that is an ewuivalent procedure and your Honor has certainly enough leeway.

THE COURT: That's where I disagree with you. Go ahead.

MR. WOODFIELD: I want to say I can't argue this state law right now because all I requested before to see a copy of this, whatever it's termed, I've never been shown a copy and I haven't had a chance to research the state law and I am not familiar with the state law.

THE COURT: What is the certificate?

MR. VICTOR: We've been trying to get it. It is up to the Court.

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THE COURT: I don't even know what it says.

MR. VICTOR: We know we have the certificate.

THE COURT: I still must see what the paper says.

MR. VICTOR: It is a form and they sign the form.

THE COURT: Sure. But I never saw one. I'll be candidly honest, in all the years I -- I sat in Supreme Court fourteen and a half years, I never had an application under the corrections law for a certificate of disability. I'm saying that candidly. I know what the reason for it was. Maybe they all rehabilitated without me. I don't know. It could very well have been. But I don't know what it says. I've never seen the form and I will not pass on it until I read the form.

MR. WOODFIELD: In any event, may I be heard on another aspect of this? I am not prepared to argue this now because I am not afamiliar with the state law. But in any event, it seems that you have a grasp of this area of the law but at one particular point I want to stress where Mr. Victor is incorrect and that is if your Honor should lean its way in this decision-making, you should lean toward the defendant and I submit, your Honor, that is incorrect. Judge Weinstein specifically states in his treatise that when a case involves basically the testimony of an accused

against an accuser, or in this case, an accuser, Salvatore Montello, against the accused, Mr. DiNapoli, the Court should be more inclined to allow prior convictions to be introduced to impeach the credibility of the defendant because it's question of credibility. The credibility of the accuser against the credibility of the accused. It specifically stated in Weinstein on Evidence, and particularly your Honor, in this case, where they cross-examine Salvatore Montello on arrests that were later dismissed and they knew it. They had copies of the rap sheets which indicated the dismissal. Nevertheless, they asked him were you arrested, I forget -- were you arrested and what happened to those charges. They were subsequently dismissed. So they talk about arrests that have been dismissed to impeach the credibility of the Government's witness. The Government certainly should be able to introduce a prior conviction of the defendant which goes directly to honesty and integrity.

MR. VICTOR: Your Honor, that's completely contrary to the U.S. against Luck.

MR. WOODFIELD: Which is not controlling.

THE COURT: Not controlling today. Luck is out.

MR. VICTOR: The rationale is still controlling and we have the sections that call for it to be an

equivalent procedure. Your Honor, I call to your attention another significant situation here. This conviction for this misdemeanor was long after the events that transpired in this case.

MR. WOODFIELD: That's irrelevant. We're weighing his credibility on the stand.

THE COURT: And the credibility of witnesses under the new rules is quite elastic. You can almost impeach anything you wish, unless -- the real standard is whether there is so much prejudice that it's outweighed by the probative value.

MR. VICTOR: That's exactly what I say. That there is that much prejudice.

THE COURT: It's very hard for me to reach that one in this case and I do it quite frequently, but it seems to be a strictly borderline thing rather than a real line demarcation, yes.

(Continued next page.)

MR. RICHMAN: I have another motion.

THE COURT: I thought you wanted to say something about this? You do not want to argue this one?

MR. RICHMAN: I don't feel like arguing today on that.

THE COURT: O.K.

MR. VICTOR: Thanks for the help.

THE COURT: I will not make a ruling until I see the certificate.

MR. RICHMAN: We will get a certificate for you this afternoon.

THE COURT: I want to see the certificate that was issued of what the Judge said in that certificate. I am sure there is some statement in there. I do not sign an order without seeing what I am signing.

MR. VICTOR: I am very familiar with it. All it states is exactly what's in the law, Certificate of Relief from Disability.

THE COURT: You can be an officer of the Court. However, I am not accepting what you say a Certificate of Disability says in that man's case.

I may know what it says in any man's case; but I want to know in this case what the Judge said and what he signed, because it is a Judge's order and it

cannot be done without the Judge. I want to know what it is.

All right.

MR. VICTOR: Thank you.

MR. RICHMAN: If the Court pleases, I'd like to address the Court.

THE COURT: Yes.

MR. RICHMAN: Your Honor, I believe my brother counsel and I wish to make a motion -- Mr. Victor, would you join this motion which I am about to make?

THE COURT: Which motion is this now?

MR. RICHMAN: Mr. Victor has adequately covered his issues. I join his brilliance and eloquence.

MR. VICTOR: Luck is 348 Fed. 2d, 763.

THE COURT: All right.

MR. RICHMAN: Your Honor, I would respectfully move at this time for the suppression of the testimony of Salvatore Montello on the basis that it was illegally obtained.

The testimony as given by Mr. Montello indicated that Mr. Montello received certain benefits for his testimony.

Section 201 of Title 18, the section governing bribery of public officials and witnesses, states in Subdivision (i), "Whoever, directly or indirectly asks,

demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself, for or because of the testimony under oath or affirmation given, or to be given by him as a witness, upon any such trial, hearing or other proceedings, or for or because of his absence therefrom, shall be fined not more than $10,000 or imprisoned for not more than two years or both. This is not to be construed to prohibit the payment or receipt of witness fees provided by law."

Those witness fees, by the way, are restricted.

I am familiar with the Witness Protection Act, which flies in the face of this particular provision.

However, if the Court is to permit the Government to have the benefit of the Witness Protection Act, to wit, giving monies --

THE COURT: Support.

MR. RICHMAN: Support, it creates a situation in which the Government has an undue advantage in that if counsel were to do the very same act, to any witness, he would be himself committing a crime, as the Government is doing here.

By giving the Government this advantage, it now creates a Fourth Amendment problem, in that it is a denial of due process and the right to a fair trial.

I submit, your Honor, based upon the fact that the Government is committing a criminal act and that they are thereby benefitting from this criminal act, similar to Map and all the decisions --

THE COURT: Not an agency as the United States Government? What are you talking about?

MR. RICHMAN: I am talking about bribery. They are bribing a witness.

THE COURT: By coming within the Protection Act?

MR. RICHMAN: Specifically says that.

THE COURT: Is that the thing of value?

MR. VICTOR: It comes down --

MR. RICHMAN: $16,000.

MR. VICTOR: Tells what --

MR. RICHMAN: Is that a thing of value?

MR. VICTOR: In essence, your Honor, they say tell us what we want to hear and we'll give you anything you want.

MR. WOODFIELD: That's a good argument they can make to the jury, and I am quite sure they will.

I think this is -- this rather novel argument I think should be briefed, your Honor. I don't think we should spend our time discussing it now.

MR. RICHMAN: Your Honor, I recognize the

significance of it.

THE COURT: Go ahead if you want to brief it.

MR. RICHMAN: I intend to make an issue of it and I want it put on the record and clearly established.

THE COURT: I do not know of any trial where I haven't had the issues of everything, including the Constitution of the United States. It does not make --

MR. RICHMAN: Until Map against Ohio, the Government and State authorities were doing things for 150 years and nobody said a thing about it. Suddenly, the Government is doing this for less than ten years, and if I raise it, and when the Judge tells me it's been going on for a long time, it's no justification from it going further. If something is wrong, it smells from the beginning.

THE COURT: Things that have been progressive are removed and it goes back;

MR. RICHMAN: That's not progress. That's retrogression.

THE COURT: You can follow that issue, if you wish, but I will deny the motion.

MR. RICHMAN: Very good. As long as the issue is made for the record.

THE COURT: It is right on the record.

Does anyone want to contest the photographs

* * *

AFTERNOON SESSION

(The following occurred in the absence of the jury.)

THE COURT: Are we ready now?

MR. COIRO: Yes, your Honor.

THE COURT: I hope so. As to that certificate -- relief from disability, I am ready to make a decision on that. You may be seated back there for a moment. Okay. I am ready to make -- they don't want to hear it. Can I make it anyway?

MR. RICHMAN: Sorry, your Honor.

THE COURT: There are a few things going on here but I thought I was part of it. All right.

MR. COIRO: Like -- Judge, like the husband with an errant wife.

THE COURT: Don't let my smile and my easy nature somehow deceive you because it can turn the other way without any problem. I want to make a determination on that certificate of relief from disability and this Court has come to the conclusion, after all of the argument that's been tendered before the Court, and reading the section, I must deny the application. Okay.

MR. VICTOR: I most respectfully except.

THE COURT: You have an exception. All right.

* * *

MR. COIRO: The defense calls Vincent Montella.

V I N C E N T J A M E S M O N T E L L A , called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COIRO:

Q Mr. Montella, will you keep your voice up please so that the last juror here can hear everything you say.

A Yes, sir.

Q How old are you?

A 54.

Q Are you employed?

A Yes, sir.

Q Where are you employed?

A I am right now employed with the JMG Builders, a subsidiary of Freight Distributing Company of Alexandria, Virgina.

Q And Mr. Montella, are you the brother of Salvatore Montella?

A Yes, sir.

Q Also known as Sonny Black?

A Yes, sir.

Q Mr. Montella, do you know Vincent DiNapoli?

A Yes, sir.

Montella-direct

Q How long have you known him, sir?

A Give or take, I'd say seven years, or eight years.

Q Will you bear with me for one moment, sir.

Aside from the job you told us that you now have, are you a horse owner?

A Always have been for many years.

Q Are you presently a horse owner?

A Yes, sir.

Q Do you race horses at various tracks throughout the country?

A Yes, sir,

Q You have another brother by the name of Louis Montella?

A Yes, sir.

Q Was Mr. Montella, Louis Montella, a handicapper?

A One of the best.

Q In fact, he had a registered tout sheet in Washington?

A Correct.

Q Your brother Salvatore Montella, was he a handicapper?

A Better than average.

Q Mr. Montalla, were you present at Pocono Downs

during October of 1970?

A Yes, sir.

Q Would you be good enough to tell this Court and jury how you came to go to Pocono Downs in 1970?

A Well, the truth of the matter, my brother owed me money and he called me. He was at Pocono and I went down there. I figured the only way to get money out of him if he owes you, to get it when hes got and that's how I went to Pocono.

MR. WOODFIELD: I object. Can we indicate which brother?

Q Which brother owed you money?

A Sonny the Black Montella.

Q And you did go to PoconoDowns in October of 1970? Is that correct?

A Yes, sir.

Q Did you help your brother -- withdrawn.

Would you explain to this jury what keying a horse means?

A A good handicapper with enough money behind him can key several horses. A good handicapper can take a ten horse field and knock out say two or three horses that the horse doesn't have a shot to win and take what they feel to be in contention, a favorite can be a favorite or 50 to 1 shot

the way you handicap it, and key these horses. Let's face it, you and I and the normal working person couldn't do this, it's an expensive thing. That's what they cal l keying horses. They key it and wrap up a box.

Q Did you meet your brother --

A He may be speaking a foreign language at this time. I for one don't know what he's talking about and I don't know if the jury knows what he's talking about.

Q Let's take the word keying a horse. Explain that nice and slow.

Q In being a handicapper and race tracker, you have the ability of being a good handicapper and I consider myself being a good handicapper and so are my brothers. You read a ra ing form like you read a book. The indications on the form is what they call past performances of horses that have run. They show and average of eight races for each horse on the past performance. You, with your knowledge have got to pick these horses. You say I will use Joe Blow and Frank Doe as horses. They have a good shot in this case and I will key them. You take these two horses and you continue making combinations which can run into the hundreds and thousands because the race tracks have this organized to where you must invest 4 or 5,000 to even key all the horses. So it takes to key two horses in a ten horse field it would

cost 3,900 to $4,000 and you have to be lucky that the jackpot you're shooting for comes back more than $3,900 for your investment.

In many cases it doesn't. Many cases it will come back 4 or $500 and you lose money. In many cases it comes back 20 or $30,000. So a gambler with money can afford this. That's why I said a normal person couldn't afford this. I have seen myself do it mentally and physically, but to afford it I couldn't do it. It takes money. I hope this is explanation enough.

Q Thank you, sir. What time did you arrive at Pocono Downs the first night you went to meet your brother?

A It was in the evening. It was about 7:15 or 7:30.

Q Did you go directly to the race track?

A Yes, sir.

Q Who did you meet at the race track?

A My brother, Jimmy SantaMaria, and Johnny was there and that's all at that moment.

Q Did there come a time later on that evening when Mr. Vincent DiNapoli arrived?

A Yes, he did.

Q Did he arrive with somebody else?

A With his dad and their nephew.

Q What time was that that he arrived?

A A half hour after I had gotten there. Don't pinpoint me to the time. Half hour to 40 minutes.

Q What happened when Mr. DeNapoli got there?

A He sat down and he talked and he handed Sonny money.

Q What happened after Mr. DiNapoli handed money to Sonny?

A Well, Sonny had a list of numbers made for the keying and I myself, Jimmy and Sonny went up and made the numbers that were given to us by Sonny for the combinations.

Q You placed the bet?

A Yes.

Q Was there a winning ticket to those keys that you bet?

A Yes, there was.

Q Do you know who if anybody cashed that ticket?

A I believe it was Mr. DiNapoli, elder Mr. DiNapoli.

Q Were you at the race track the next night with your brother?

A Yes, I was.

Q Were you there the third night?

A Yes.

Q And the fourth night?

A Yes.

Q When you first received the call from your brother, where were you at that time?

A At home.

Q Where is home?

A Virginia.

Q Where was he calling you from?

A From the Poconos.

Q Had he told you how long he had been at the Poconos?

A He said he was there a week or so, why don't I come up and I did go up. I used to go up any time Sonny called me anyway, because I love racing and I love different tracks.

Q Mr. Montella, at any time did you ever see or did your brother ever tell Vincent DiNapoli, yourself or anybody including Mr. Feder, that he was fixing races?

A No, sir, never in front of me. I'm sorry, I won't put up with tne anyway because I don't believe in it.

Q Did you ever see Mr. DeNapoli engage in any conversation with any of the jockeys?

A No, sir.

Q You were there all four days, were you not?

A Yes, sir.

Q And they cashed another big winning ticket?

A Yes, sir.

Q Did you receive any money from your brother?

A Not a dime. Never got the money he owed me either.

Q Never paid you the money he owed you either?

A No, sir.

(Continued next page.)

BY MR. COIRO: (Cont'd.)

Q You know of your brother's criminal background, do you not?

A Yes, sir.

Q Was your brother a habitual liar?

MR. WOODFIELD: I object, your Honor.

THE COURT: I will allow it.

A Please ask the question again.

Q Was your brother a habitual liar?

A Without a doubt.

Q He used members of his family?

A He used everybody. He used us all the way he is using these people now and it breaks my heart to be here in court to do this. He is no good.

Q Are you here on subpoena?

A Yes, sir.

Q When did you meet me for the first time?

A Yesterday, I guess.

MR. COIRO: No further questions.

THE WITNESS: Excuse me, your Honor?

THE COURT: We will take a short recess at this point anyway.

(The jury withdrew from the courtroom at 11:25 a.m.)

(Out of hearing of the jury.) 422

MR. COIRO: Judge, I just wanted to call to your Honor's attention, I think your Honor might have noticed that Mr. Montella, thiw witness, has to take air -- he suffers from emphysema. I know you can observe him, you are close to him, and should a problem arise I would like to bring it to your attention.

THE COURT: It will be all right. Don't worry.

(Montella resumes the stand.)

(The jury entered the courtroom at 11:47 a.m.)

DIRECT EXAMINATION

BY MR. RICHMAN:

Q My name is Murray Richman; I represent Mr. Feder.

A Yes, sir.

Q Do you know Mr. Feder?

A Yes.

A How long do you know him?

A Same length of time I know Mr. DiNapoli.

Q Do you know if your brother knew Mr. Feder?

A Yes.

Q And Mr. Feder was present some time during the time you were referring in October of 1970, was he not?

A Yes.

Q Will you tell us if you know what your brother thought of Mr. Feder?

MR. WOODFIELD: I object, your Honor.

MR. RICHMAN: I think it is quite germane it is very essential --

THE COURT: I don't know what you mean by "thought of him".

Q Would you say your brother was friendly with Mr. Feder?

A No. He hated him with a passion.

Q Do you know why he hated him?

A Well, I am going to say something here and I don't want to offend anyone in this courtroom but he hated Jewish people as a rule.

Q He didn't like Mr. Feder particularly?

A Yes, he hated him, period.

Q With relation to your brother's time in jail; you are aware he spent time in jail?

A Yes, I know this.

Q How did he handle being in jail?

A I guess he couldn't handle it because he climbed the walls and he made our whole family climb the walls.

MR. WOODFIELD: Objection.

THE COURT: Sustained.

Q Prior to this morning, did you ever meet me or speak to me about this case or anything else?

A No, sir.

MR. RICHMAN: I have no further questions, your Honor.

THE COURT: You may examine.

CROSS-EXAMINATION

BY MR. WOODFIELD:

Q When was the last time you saw your brother?

A Let me just think.

Right in this courtroom I would say about three years ago when he came up for some kind of a trial of some sort. I was in New York.

Q Did you talk to him then?

A Yes, I did.

Q Were you friendly with your brother then?

A We are brothers regardless of what happens. I will tell you this right now. He is still my brother, now you take it from there.

Q You know your brother is a criminal, is that right?

A He is also a bum but he is my brother.

Q You don't like the fact that he is cooperating with the Government?

A Now, just a minute. You look here --

THE COURT: Just a minute. You have no right to argue with the attorney. He has a job to do.

THE WITNESS: Can I answer it in my way.

THE COURT: No.

A Ask the question again.

MR. WOODFIELD: May I have it read back?

(Question read)

A You ask him, I didn't want him to read it. You ask him.

THE COURT: No, this is the way we do it. You are not allowed to take over my courtroom.

THE WITNESS: I am not taking it over.

THE COURT: Answer the question.

A No, I don't. What he does is his business. I am here on something else. I couldn't care less what my brother is doing.

Q Isn't it a fact that you vehemently dislike your brother because he broke the honor code among the Italians and he is cooperating with the Government?

MR. COIRO: I object, your Honor.

THE COURT: I sustain the objection.

MR. COIRO: I move for a mistrial and withdrawal of a jury or --

THE COURT: I will deny the motion.

Disregard the question completely.

BY MR. WOODFIELD:

Q Did you see your brother on a regular basis prior to the last time you saw him?

A No, sir, on and off.

Q You are never friendly with your brother?

A I am very friendly with all my brothers.

Q It is very obvious --

MR. COIRO: I move that last remark be stricken.

THE COURT: Strike it out.

Q You say you were in Virginia when your brother called you from Pocono Downs and told you to come to the race track?

A Yes, sir.

Q Were you working then?

A Yes, sir. I was construction superintendent with the Gulf Oil Corporation.

Q What were your hours?

A Whatever I wanted them to be but usually 3:00 o'clock was my quitting time five days a week.

Q Monday through Friday?

A Yes.

Q What day of the week did your brother Sonny call you?

A It makes no difference. It only takes me three and a half hours to go there driving.

Q How long were you there?

A Four days.

Q What days of the week was that?

A Toward the end of the meet. I believe it was the last four days of the meet and I believe it was Wednesday Thursday, Friday and Saturday. Now, that's roughly speaking.

Q You haven't looked at any results for races for those dates recently, have you?

A I looked at what you call a past performance.

A When did you do that?

A Yesterday.

Q With Mr. Coiro?

A Yes.

Q Did he show it to you?

A Yes.

Q Did he discuss the case with you?

A We discussed the case, yesterday, right.

Q So you were there on a Wednesday, Thursday

and Friday?

A It could be. I could be wrong. You are talking almost seven years ago. I know it was towards the end of the week.

Q Nevertheless, you took days off from work?

A No, no. I am sorry, I did not take any time off from work.

Q Tell us what you did?

A I told you. I would drive there and drive back.

Q What time of the day would you leave?

A 3:00 or 3:30 in the afternoon.

Q What time would you arrive in the Poconos?

A 7:00 o'clock. No problem.

Q Right to the track?

A Yes.

Q So if your brother had met with Mr. DiNapoli and Mr. Feder that afternoon, you wouldn't know that?

A True.

Q Well, you wouldn't be there?

A That's correct.

Q Did you go to the track all four nights?

A Yes, sir.

Q Did you see Mr. Feder there?

A He was not there the first night but he was there after that.

Q And you recall that?

A Yes, definitely.

Q That's something clear in your mind. You remember he was not there there the first but was there on the other nights?

A I do recall, yes.

Q Any particular reason why that is fixed in your mind?

A Because Sonny cursed at him the first night we were there. The second night he was there Sonny started to curse at him and said,"What the hell are you doing here?"

Q What was his response?

A Who, Mr. Feder?

Q Yes.

A He shrugged his shoulders, he is not the type to argue.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. WOODFIELD (Cont'd):

Q Didn't he say, Vinny DiNapoli told him to come down?

MR. CCIRO: Objection.

THE COURT: Overruled.

Q Did he say that?

A I don't know. When Sonny would talk to the guy, the guy would shake. He feared him so much he would shake, and this is the God's honest truth.

Q Anything you say is the God's honest truth.

MR. RICHMAN: I object.

THE COURT: Sustained.

Q Do you recall Mr. Feder telling Sonny that he was going to the race track and he was there on the orders of Mr. DiNapoli?

MR. RICHMAN: Objection.

THE COURT: I will allow it.

A I can't remember the conversation.

Q You do remember the portion of the conversation involving your brother, Sonny?

A Yes. You can't help it because it's always a scene.

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Q How many times did you see Mr. Feder there at the race track?

A Two or three times. Three times I would say I saw him.

Q Did you see him cash any tickets?

A The one night he cashed a big ticket.

Q How much was that?

A In the 40's.

Q Do you recall him cashing that?

A Yes.

Q Where did he go with the money?

A I left right after it. I left befor he even collected all the money.

Q And went back to Virginia?

A Yes.

Q Never saw him go to a hotel room?

A What they did I don't know.

Q Did you ever go to a hotel room with them?

A Yes, I visited them several times while we were there.

Q What time of the day?

A Because the third day we went out to eat together the whole bunch of us.

Q Before or after the races?

A After.

Q And then you left to drive back to Virginia?

A Yes.

Q No question you were there on those few days?

A Yes, sir.

Q Did you see Mr. DiNapoli present when Mr. Feder cashed that big winning ticket?

A We were all there and I left.

Q Who was there?

A Mr. DiNapoli.

Q Do you recall who was there? Name all the people you recall that were there?

A Mr. DiNapoli, Feder, Vinny, the old man, myself and Sonny.

Q Now, while you were there, Mr. Montella, did you buy any tickets?

A On my own -- you mean for them or on my own?

Q On your own.

A Yes.

Q A lot?

A No, I am not that kind of a gambler.

Q Did you win?

A I didn't win nothing big. I win a few bucks here and there and lose a few dollars because I'm not a big bettor.

Q Did you talk to your brother, Sonny, about the races?

A No, sir, we differed on handicapping.

Q He didn't give you any hot tips?

A No.

Q Didn't tell you to bet the exacta?

A No.

Q Did you stay around for the Ninth Race for the last night of the meet?

A No, I left. Not the last night of the meet. No, I left.

Q Did you purchase any tickets for your brother, Sonny?

A Yes, sir.

Q How many?

A I didn't count them. You just went with the list to the window.

Q You bought a lot of tickets for him?

A Yes.

Q Did you see Mr. DiNapoli buy any tickets for him?

A He didn't buy any tickets.

Q Who else bought tickets on the wheel?

A Me, Jimmy and Sonny.

Q You never saw Mr. Feder buy any?

A No.

Q You never saw Mr. DiNapoli buy any?

A No.

Q Did you see them all the time you were there, Mr. Feder and Mr. DiNapoli?

A Not all the time. Like I say, I would meet them at the track when they were there. On one occasion, Mr. Feder was not there but he was there on other occasions. We would have dinner at the track and that's it.

Q How much money did your brother owe you?

A $1,600.

Q You didn't collect it?

A No, sir, I didn't.

Q Did you try to on other occasions?

A Yes, sir.

Q Did you talk to him recently about it?

A I haven't seen my brother over three

years now, if not a little longer.

Q Mr. DiNapoli, with your experience in horse racing, would it just be lucky the day when you hit a jack pot for $48,000.?

MR. COIRO: I think he means Mr. Montella.

Q Mr. Montella?

A It requires a lot of luck and a lot of skill. He was one hell of a handicapper. You got to be lucky that a couple of long shots sneak in. If they don't sneak in, you're going to lose.

Q The horses riding short, if they win you don't even win much money?

A What do you mean, short?

Q Short odds.

A Well, if they get in on the deal, you have to be lucky that the long shots will hit and not the favorites and that is the only way it pays off big. If the favorites are in there the price will come back short and you lose money to the bet because the investment is big.

Q To win $48,000. would mean short horses didn't finish first or second?

A That's right.

Q If you won $48,000. on a big exacta, that

would indicate that the short horses didn't finish first or second?

A No. You can get a favorite in there with two long short and take the pool down or get a favorite in the middle. It doesn't have to be the favorite out of the money.

Q Nevertheless, the favorites are not the winning the races if your jack pot is $43,000.?

A I would have to go along with you.

Q That can be done by luck?

A Luck and handicapping.

Q How about bribing the jockeys, that's another method?

A If it is, I don't know anything about it and I don't want to know nothing about it.

MR. WOODFIELD: No further questions.

REDIRECT EXAMINATION

BY MR. COIRO:

Q. Mr. Montella, did anybody, Mr. DiNapoli, Mr. Feder, your brother, Sonny Black, anybody ever intermate to you that the race had been fixed or jockeys had been bribed?

A No, sir. As far as I'm concerned, it was never done and I would have resented the fact very

much.

MR. WOODFIELD: I object. That is not responsive.

THE COURT: Strike out the first part.

MR. COIRO: There is one question I neglected to ask on direct examination. May I ask it?

THE COURT: Yes.

Q How long would you say you knew Vincent DiNapoli?

A About eight years.

Q Does this man, Vincent DiNapoli, speak and understand Italian?

A No, sir, not a word because I tried to speak to him on several occasions and he just looks at me.

MR. COIRO: That is all I have.

MR. WOODFIELD: I have nothing further, your Honor.

THE COURT: You may step down, Mr. Montella.

MR. COIRO: Your Honor, may I with your permission and with the Assistant U.S. Attorney approach the side bar?

* * *

HELENE MONTELLA, called as a witness, having been first duly sworn by the Clerk of the Court, took the stand and testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Helene, H-e-l-e-n-e Montello, M-o-n-t-e-l-l-a.

DIRECT EXAMINATION

BY MR. COIRO:

Q Mrs. Montella, would you please keep your voice up so that this last gentleman can hear every word that you say?

Mrs. Montella, how old are you?

A Over 30.

Q Mrs. Montella, are you the wife of Salvatore Montella?

A Yes, I am still the wife of Salvatore.

THE COURT: Talk to the mike there. You will do better that way.

A (Continuing) For a short time, anyway.

Q Are you in the process of obtaining a divorce?

A Yes, I am.

Q Mrs. Montella, I take you back to October of 1970. Were you living with Salvatore Montella at that time?

A Yes, I was.

Q And where were you living at that time?

A Bayshore.

Q Bayshore, Long Island?

A Yes.

Q And who did you reside there with?

A My daughter Deborah, his son basically, and hisother children. He has three other children. They would come weekends or holidays and for the summer.

Q Mrs. Montella, do you know Vincent DiNapoli?

A Yes, I do.

Q How long have you known Mr. DiNapoli?

A Oh, I would say approximately ten to twelve years, thirteen years.

Q Now, Mrs. Montella, did there come a time in October when your husband Salvatore Montella went to Pennsylvania?

A Yes. In 1970 you are talking about?

Q Yes, in 1970, October.

A Yes.

Q How long was he in Pennsylvania at that time?

A Well, he would go away four or five days at a time and come back weekends, and then go back again, and then come home.

Q What would you say was the longest period he

was away at a given stretch?

A Well, I think the racetracks are open there five days, six days a week, whatever, and he would stay until the racetrack was closed, terminated the meeting, I am sorry.

Q Mrs. Montella, in October of 1970 did Vincent DiNapoli ever have a meeting at your house with your husband?

A At that time?

Q In 1970.

A While he was in Pennsylvania?

Q Yes.

A No, he did not.

Q As a matter of fact, did you receive telephone calls from your husband in Pennsylvania?

A Yes, I did.

MR. COIRO: Judge, would you bear with me for one moment?

BY MR. COIRO:

Q Mrs. Montella, did you visit your husband when he was in prison?

A Yes.

MR. WOODFIELD: Objection, your Honor, as irrelevant.

THE COURT: Well, she can answer that question. I will rule she can answer.

Q Was this at Lewisberg, Pennsylvania?

A Yes.

Q On how many occasions would you visit?

MR. WOODFIELD: Your Honor, I object as to relevance. I do not see the relevance of this line of questioning at all to the issue in this case.

THE COURT: No, not relevant to the issue here.

MR. COIRO: I think it bears on the issue of the question of his credibility.

MR. WOODFIELD: I object to it.

THE COURT: Because he said she did. I do not see what it has got to do with it.

MR. COIRO: I just want the purpose of it.

MR. WOODFIELD: I object. It has norelevance to the issue here in this case.

THE COURT: It has to have something to do with this case.

MR. VICTOR: Your Honor, at a side bar I will give you an offer of proof --

THE COURT: I just do not see the relevance except on credibility, and the proof would not be sufficient.

MR. VICTOR: It is more than credibility.

MR. COIRO: Can we at the side bar very

briefly discuss it?

THE COURT: Yes.

(The following discussion took place at the side bar between the Court and counsel.)

MR. VICTOR: Your Honor, on a number of occasions and in the presence of other people at times, to take it out of the area of so-called privileged communications, first of all her observations were he couldn't talk much. He was on medication. He was crawling up the wall. As a fugitive he made a statement to her in the presence of someone else that he would never go back to prison, and if necessary would frame people if he had to. And if that is not relevant to the issues in this case I don't know what else could be. It is directly relevant.

(continued next page)

(Still out of the hearing of the jury.)

MR. VICTOR: (Continuing) That is directly relevant to his motivation for testifying in this case. There is nothing more relevant than that statement and he made that in the presence of other people other than her and we have that other person here today also ready to testify as to that.

Certainly not a privileged communication.

MR. GOODFIELD: It is irrelevant as Judge Weinstein found in a case such as this. It is a collateral issue and has nothing to do withthe issues in this case.

MR. VICTOR: Judge Weinstein made no such finding.

THE COURT: I think it is absolutely hearsay.

MR. COIRO: This is so vital so far as this defendant's credibiltiy is concerned. It is unbelievable and it is --

THE COURT: This is an issue between husband and wife.

MR. WOODFIELD: We are not trying him on his marital difficulties.

MR. COIRO: This has nothing to do with his marital problems. In other words, this man

has now brought forth to this jury certain reasons why he ran around. I am going to show your Honor through a statement that he made and I will tell you now that when he was escaping from the house she pleaded with him not to escape and told him don't run away. Stay here and face your punishment.

This is twenty minutes after he ran away she said to him, come back. These guards will take you back. He said, if I come back those guards will kill me before I get to Lewisburg.

THE COURT: Why isn't it collateral?

MR. VICTOR: The statement that he would frame people, if he had to he would frame people to stay out of jail.

MR. COIRO: That's the whole issue. That's the whole case.

MR. WOODFIELD: It's clearly evidence that couldn't be introduced in this trial.

MR. COIRO: It's a reason. Not because he is a public spirited citizen or had a change of heart.

THE COURT: Why didn't you ask him, you would frame people?

MR. WOODFIELD: You live with the answers and

you couldn't introduce collateral evidence.

MR. COIRO: We asked the question. He always said it is because of what happened to me.

THE COURT: You had a right to ask him the direct question and if he denied it you could bring her in and ask her. You couldn't do it backwards.

MR. VICTOR: It makes no difference.

THE COURT: You couldn't do it that way. If he said no, you can bring her in and ask her if he made that statement.

Now, it is hearsay.

MR. COIRO: I don't see how you can say it is hearsay.

THE COURT: Why didn't you ask the question?

MR. COIRO: We did ask the question.

MR. WOODFIELD: If he did he couldn't do it anyhow.

MR. COIRO: You --

THE COURT: The one question you asked him, are you sure you were afraid to go to jail because you would be killed.

MR. COIRO: I did ask him.

THE COURT: And the next question you asked him is , didn't the whole prison suffer by your runni

away.

MR. COIRO: Exactly.

THE COURT: I remember the questions. I never forget the questions.

MR. COIRO: I didn't think you did.

MR. VICTOR: If that's the basis of your ruling we'd ask for a recall of this witness. I don't know if it's necessary but if it would satisfy the situation in the interest of justice --

MR. WOODFIELD: It's classic Horn Book Law. You couldn't bring in independent evidence.

THE COURT: I think you are wrong.

MR. VICTOR: He has made the statement in the presence of someone else who is prepared to be here to testify to the fact that he said he was not going to prison and that even if he had to frame people he'd do that.

THE COURT: It has to be in controversy, this case.

MR. COIRO: Let me show you another example.

MR. VICTOR: There is motivation in this case.

THE COURT: What is it?

MR. VICTOR: He made the further statement

while a fugitive when he called Mr. DiNapoli for help and was refused and he said, I will get that fat bastard.

THE COURT: There is no proof of that in the case.

MR. VICTOR: We have the proof.

MR. COIRO: He also testified that he saw his daughter and he flipped out. We are prepared to show that he asked everybody in that house for help to escape and that it was 8:00 o'clock in the morning and almost 4:00 o'clock in the afternoon before he convinced the 17 year old boy to help him escape.

MR. WOODFIELD: We have to deal with the issue.

THE COURT: I don't think it has any bearing on the issues inthis case.

MR. VICTOR: We have motivation in that he had an animosity to Mr. DiNapoli and threatened to get him and would frame people almost in the same context.

MR. COIRO: That's vital to this case.

MR. WOODFIELD: It is utter hearsay.

THE COURT: I will take a five-minute recess. I don't think I agree with you.

(In the hearing of the jury.)

THE COURT: We will take a five-minute recess, ladies and gentlemen. Please do not discuss the case.

(The jury withdrew at 3:45 p.m.)

(Out of the hearing of the jury.)

THE COURT: Did you find anything else?

MR. WOODFIELD: No, your Honor, and looking at Rule 803 which deals with hearsay, it is clear these statements don't fall under the exceptions.

The only exception available is the last, 124, which is entitled "Other Exceptions," and that's a general catchall.

There are a couple of criteria that must be met; in the second line.

"But having equivalent circumstances all guarantees of trustworthiness " -- here clearly a woman who is estranged from her husband involved in a civil suit presently pending with her husband that affects the trustworthiness of her statements.

Moreover, if you continue -- "The statement is offered as evidence of a material fact." Clearly not a material fact, clearly collateral. "It is more probative on the point that is offered than

any other evidence."

This is not relevant to these proceedings at all.

THE COURT: You see there are some cases on it. If you follow the rule you might be accurate in that but there are some cases that seem to talk about where there is either bias or an attack upon the credibility of the witness itself, there is some statement that it would be admissible, but it is a very, very severe question. U.S. v. Haggerty, where they committed an error not to permit such an examination into evidence.

They did ask there, the witness on cross-examination, whether or not they had made a certain statement and they got a negative reply and then it was admitted.

But the Court of Appeals seemed to hold if it wasn't asked it was not admissible.

MR. WOODFIELD: I would introduce evidence to rebut that and we'd be lost in a collateral issue which does not deal with this case.

THE COURT: Judge Weinstein's Vol. 3, they talk about two classes of evidence would not be considered collateral according to this definition.

Facts which are consequence s material to the facts in issue and number two, facts independantly admissible to impeach by showing bias, capacity for truthfulness or the impairment of a witness' power to observe, remember or narrate, according to Rule 803; these are the rules where the testimony would be the great test.

Of course in this case there is a question of whether or not by -- the bias statement made by the witness, Montella, whether or not the probative value is such that it is admissible.

MR. WOODFIELD: You just had raised 403. It says whether or not the probative value substantially outweighs the danger of confusion of issues or misleading the jury.

That's exactly what we are dealing with.

THE COURT: It is not clearcut.

MR. COIRO: To answer one of the questions Mr. Woodfield posed, as far as this divorce proceeding is concerned, it is uncontested. He signed.

Secondly, the other thing that I am prepared to show through this witness that I say to your Honor and I would like to preface my reamrks by stating this: Aside from what the Federal rules

set forth in Judge Weinstein's treatise, I state to your Honor in good conscience, that Mr. Montella has waived any privilege that existed between himself and Helene Montella and the questions I posed to him.

Why I say she is so vital and so vital to his credibility is that he testified and you correct me if I am wrong, he testified from that witness stand that he told this girl, he said this girl was a pig, that he dismissed her and didn't want anything to do with her.

I have the wife prepared to testify that FBI agents, after he was rearrested in connection with the fact that he ran away,how they begged and pleaded with her to come back to him because he wouldn't cooperate with the Government until she went back with him. If that doesn't bear on his credibiltiy then I don't know what does.

MR. WOODFIELD: Does that bear on the fact whether or not these defendants participated in a conspiracy to bribe --

THE COURT: That I wouldn't allow in. Then I think I would be on the brink of real error.

MR. COIRO: Believe me when I tell you this

man has waived that privilege.

THE COURT: That's an inducement on his part to get his wife back.

MR. COIRO: That's in contribution as to how he felt about that woman.

MR. WOODFIELD: It's not an issue in this case.

THE COURT: I don't think it's admissible under that theory at all. That doesn't sway me one bit. The only problem I have with it and it's a very, very narrow line of demarcation is the question of whether or notit attacks his truthfulness under the -- under what Judge Weinstein enunciates, otherwise it wouldn't be admissible as a collateral issue.

MR. WOODFIELD: There is extensive testimony as to prior felony convictions. To get lost on these issues is misleading the jury completely.

MR. VICTOR: This is not on the issue of credibility. This is motivation, bias.

MR. WOODFIELD: Bias to these defendants.

THE COURT: You couldn't show bias. I can't see where you can show bias to these defendants.

He said to his wife that he would do anything to stay out of jail, even frame somebody.

MR. VICTOR: And he also said that he would get that fat bastard right after he got a call to him as a fugitive.

MR. COIRO: After asking this man for money.

MR. VICTOR: It goes right to his motivation and bias. As Judge Weinstein stated, they are not collateral after they attack a man's bias and prejudice.

MR. WOODFIELD: This is 1970 --

MR. COIRO: When he escaped in 1974 he placed a phone call to this man asking for money and this man said, I will have nothing to do with him and he turned to his wife and said, I will get that fat bastard.

MR. VICTOR: He also said he would not go back to jail and he would frame people if he had to and shortly thereafter, he becomes a Government informant.

THE COURT: I couldn't reconcile myself to let it in. Even under the general rule, you are safer in leeting it in that let it out. I couldn't reconcile myself to let it in. Maybe if he was asked the question on cross-examination, I might have considered it.

MR. VICTOR: Maybe I misunderstood something I thought,when you read from the treatise,he said on bias --

THE COURT: He just wrote a book. It's not a bible. It's a guide and you still have to use your own discretion and understanding of the law in order to come to a conclusion.

MR. VICTOR: Apart from the guideline, Subdivision 3 of 803 talks about a statement of the declarant's existing mind motion or physical condition, intent motive design.

MR. WOODFIELD: Then existing when the crime was committed.

MR. VICTOR: It doesn't state we are talking about that. We are talking about the declarant's statement.

THE COURT: No, I won't let it in. I will come to that conclusion.

MR. VICTOR: In the interest of justice,

THE COURT: In the interest of justice, I won't let it in.

MR. VICTOR: I am asking for a recall of Mr. Montella. We'd like him reproduced in this courtroom. We don't know where to subpoena him.

If I have to I will subpoena him.

MR. WOODFIELD: You can't bootstrap him on asking him questions like that and bringing witnesses in to contradict it.

MR. VICTOR: Are we being denied access of this witness?

THE COURT: He was here. You knew what you are telling me now.

MR. VICTOR: I am asking for Mr. Montello's whereabouts.

THE COURT: It may still be collateral and the jury may weigh what he says but not what somebody else says.

MR. COIRO: What about the question of the fact that I state that this witness has waived the privilege.

THE COURT: Once he testified about his wife's relationship with him, yes.

MR. WOODFIELD: It's hearsay.

THE COURT: But it has nothing to do --

MR. COIRO: I'd be allowed to go into the question of payment that he says he gave her.

THE COURT: Except it's collateral. Where is it relevant?

MR. COIRO: He stated that he gave his wife money. She is prepared to testify that she practically made herself destitute selling furniture --

THE COURT: That's a marital situation.

MR. COIRO: It goes to his credibility where he made a big man of himself giving commissary money to his wife.

THE COURT. What does it have to do with this case?

MR. COIRO: It bears on the question of his motive. I say --

THE COURT: I will tell the jury, as you know, in the charge that they must consider the motive of the man. They can draw any inference they want. Only because he was given immunity he would be a defendant here.

What else can you say?

MR. VICTOR: Your Honor --

THE COURT: I will stay with my position. When I am convinced in my position that's the end of it. I don't forclose you from arguing but, that's my position.

If I am wrong, I am wrong.

MR. VICTOR: You are going to charge the jury

on the issue of motive?

THE COURT: You will have my charge tonight. You take it home, cut it up and you can take exception to it and then we will give them the final charge.

I guarantee you the jury will not be confused.

MR. VICTOR: May we have --

THE COURT: Let's finish this case.

MR. VICTOR: We want Mr. Montella. I'd like his whereabouts so he can be subpoenaed. If you don't want him on the stand, fine, but I want her.

MR. WOODFIELD: Mr. Montella will be available to the defendants if they wish to --

MR. VICTOR: As a hostile witness. Any witness who takes the stand is hostile, that's the new rule.

MR. VICTOR: We'd like to interrupt the witness.

THE COURT: This is no surprise. You can't surprise. You knew it when he was on the witness stand. I don't know whose fault it is.

MR. VICTOR: Mr. Coiro didn't know that when he was on the stand.

THE COURT: Then the other lawyer didn't tell

him what he knew.

If you have two lawyers, theyshould talk to each other. I don't know -- well, all right, I will stay with my ruling. I have made my ruling.

MR. COIRO: I respectfully except.

THE COURT: All right. You put up a good fight.

MR. COIRO: But I lost.

In light of your Honor's ruling, we do have the second witness that was available and was present at the time that Mr. Montella -- well, she would be prepared to testify to the effect.

MR. VICTOR: The witness is Debby Scarpadi, the stepdaughter of Mrs. Montella who informed me she had a conversation with Mr. Montella when was he a fugitive wherein he stated he had never gone back to prison, that he was going to frame people to stay out of prison and she is prepared to testify to that as well as his emotional condition. He was under medication, acting peculiarly and in her opinion under delusions.

THE COURT: She can't testify that a person is under delusions.

MR. COIRO: Well, that he wasn't emotionally himself.

THE COURT: I don't care which way you put it. All right. Proceed.

MR. VICTOR: Are we being prohibited from calling her?

THE COURT: I am not prohibiting you from putting a witness on.

MR. COIRO: That is what we intend to elicit from the witness.

THE COURT: If that's what you intend to elicit I tell you now it's not admissible.

MR. COIRO: Respectufly except.

(The jury entered the courtroom at 4:30 p.m.)

H E L E N E M O N T E L L A, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. COIRO: (Cont.)

Q Mrs. Montella, were you present when your husband had a conversation on the phone with Mr. DiNapoli sometime in 1975?

A Well --

MR. WOODFIELD: I object to relevance.

A I wasn't present but I heard about it. He told me about it.

* * *

that may have been stated.

(the jury entered the courtroom at 11:42 A.M.)

THE COURT: Good morning ladies and gentlemen.

All right, alternate Juror Number 2, take your seat in Number 6. You will now be a member of the jury panel for purposes of deliberation.

Any objections?

MR. WOODFIELD: No objection.

THE COURT: Juror Number 6 couldn't appear this morning because he works at night and hadn't been to bed for two nights and has advised the Court.

Now at this point we are now going to have summations which means that the Government may open his summation and state to you his position as far as what he believes he has proven as to the guilt of these defendants.

The lawyers representing the defendants in the order of which they have examined will make their closing statements to you. After that the Government if it so desires will have a right to rebut the statement that has been made by either of the defendant attorneys and of course, then you will have the whole case.

MR. WOODFIELD: Your Honor, defense counsel and ladies and gentlemen of the jury:

While this trial has taken a few days and we have been here for a while, the testimony that has come forward is rather clear. I submit the real issue in this case is formed.

For the defendants in this case have contested ans stated and have taken the position that no bribes have taken place that the races weren't fixed, that their clients were present at the race track for four days when over $90,000. was won.

We heard testimony from Salvatore Montello, Jimmy Davis and Clint Formal and they all testified these races were fixed. We know that Jimmy Davis, the jockey pled guilty to this conspiracy, to conspiracy with these individuals and others to fix horse races.

We know that Montello and Davis both testified on the stand and implicated Mr. DiNapoli and Eddie Feder in this criminal conspiracy.

We also know that Edward Feder completed IRS forms required to be completed to collect his winnings from these horse races. That's Government's Exhibit 3 in evidence.

We also know from Government's Exhibit Number 1 in evidence that these races were won, that these

defendants won and they won big.

Now in response to that evidence, the defendants have introduced testimony from Louis DiNapoli, Vincent Montella and Helena Montella. That testimony was introduced to indicate to you I suggest that these races were not fixed. I submit to you that after all the testimony is in, after I speak and after defense counsel speak to you and after Judge Costantino charges you and you go into the jury room and deal with the issues in this case.

I submit there is one issue which you will have to reach and that is, is Salvatore Montella, Jimmy Davis, Clint Formal telling us the truth. That's the issue you will have to decide in this case.

While Mr. Coiro told us in his opening that he would show that Salvatore Montella had a motive to lie in this case and he will argue that on summation, I am sure.

(cont'd on next page)

MR. WOODFIELD: (Continuing) I want to suggest to you what may appear, as I stated, a subtle point, but when you deliberate and you think about this point, not only while I speak and they speak, but when you deliberate, this will help you reach the conclusion in this case and that is, draw a distinction between a motive for someone like Salvatore Montella and Jimmy Davis to get on that stand, draw that distinction between testifying and his motive to lie from that stand.

I will speak more about this because I submit this is an important issue in this case and that you should consider seriously, the distinction between testifying and a motive to lie.

I submit there have been shown and there do exist motives for both Mr. Montella and Davis to get on the stand to testify. That is clear.

There has not been shown nor does their exist motives for them to lie from that stand.

Let's look at this for a few moments.

We know from listening to Mr. Montella that he's somewhat of an intelligent individual in the sense he's street wise and knows what is going on. There came a time when he indicated his life was in

danger and had to make a very important decision in his life. Is there any question that that was an important decision?

Here's an individual, Sal Montella, who spent his entire life not aiding the Government, but running from it; not wishing to cooperate with the authorities, but wishing to avoid the authorities; a life of crime.

Therefore, for him to do this 180 degree turn about and testify as a Government witness, I submit is a rather major decision in his life to make. He would get on that stand and testify and tell of the crimes he committed and who he committed those crimes with, he had to give up what he told you is a profession in crime that netted him between 50 and $100,000 a year. He gave that up to testify for the Government.

Certainly there are benefits that occurred that he derived by testifying and we heard those benefits. He will not be prosecuted for these old crimes that he stated to us. They are unsolved and the Government knew nothing about them.

I believe on cross-examination, Mr. Coiro indicated Mr. Montella, Salvatore, related other crimes he committed that he told the FBI, such as a

hijacking. Think of the distinction between a case like hijacking and a case like sports bribery, a concealed conspiracy.

Of course, the Government would know a hijacking took place, a man is held up and goods are stolen from a truck. Everybody knows that crime occurs, but a crime such as this, criminal conspiracy to bribe horses that was unkonwn and undetected.

You recall when Fromal was on the stand, Coiro asked him were there any Stewart investigations, the answer was no. Mr. Montella related hijackings he participated in and the individuals who were with him and also he indicated crimes the Government knew nothing about, such as this.

Did he have to relate this crime to us. I submit he didn't have to tell us. We didn't know about that. It was unsolved. What happened when he did relate this to us? Was he just making it up when we later found out that Eddie Feder cashed the tickets at the race track, that the races were run and they won big? Was he just making it up and Jimmy Davis would come in hero and plead guilty to participating in this criminal scheme?

I submit that in fact he was not making it up

and that it did occur and it's clear from the evidence we have heard in this case what exactly did take place and who participated in it.

Think for a moment about Jimmy Davis. Would Montella make up the facts that these bribes took place? Davis pleaded guilty in this Courtroom and got on the stand and related the facts as he recalled them to us. You heard his testimony and you heard the testimony of Salvatore Montella, and you must determine whether or not they are telling the truth. You heard the facts, the meetings, the money passed, the reins that were pulled.

You determine if they were telling the truth.

Now, you have heard testimony about Montella's pass and that came out rather extensively on cross-examination. Again, draw a distinction, we know he's a criminal for twenty years, that he has hijacked people, put guns to people's heads and he bribed jockeys. That's not a reason for us to invite this man home for dinner.

You may not like him at all and you may not like the fact that the Government worked out a deal with an individual such as that to come into this Courtroom and testify.

Draw the distinction, ladies and gentlemen. The distinction is this.

That this man came forward and presented evidence to us, evidence of a crime we knew nothing about. If he wasn't a criminal, he wouldn't be testifying and wouldn't be telling us about his involvement in this crime, and we wouldn't know about it.

What happened after he told us about it? Jimmy Davis came in and pleaded guilty and told us the facts, and told us of the involvement of these two gentlemen in this conspiracy.

While defense counsel may excuse his criminal background, don't let prejudice enter your mind. The fact that he has had marital difficulties and that he's a criminal and testifying against one of his friends, that's not reason for him to be a liar. It is a reason for you to dislike him, but we are not here to determine a popularity contest, but where the truth lies.

Are these men telling us the truth? This testimony is not based alone, this case is not based on the testimony of Salvatore Montella alone. Davis testified. You determine how he answered questions on

direct and cross. Was he hesitant in his answers attempting to hide something, or did he answer the best he can recall?

Defense counsel may come up and point out what they call glaring inconsistencies of the testimony of Montella and Davis. You heard their testimony. It is not what I or defense counsel tell you about their testimony that's important, it is what you recall. You determine whether or not there are going to be inconsistencies in a story that you relate of a story that occurred six years ago.

From their testimony and all testimony in this case, you determine whether or not the basic facts in this case occurred and that is bribes took place and money changed hands and horses were held to the benefit of these two defendants and others to the tune of $90,000.

The Government also called Clinton Fromal and he testified and he was a jockey and he stated that as he recalls, he was in the room on one of the afternoons, on one or possibly two occasions when money changed hands between Montella and Davis. He recalled seeing Vincent DiNapoli in that room. He didn't tell us anything else concerning the facts of

this case.

He stated he didn't remember. I am not here to have you decide why people don't remember events that occurred six years ago. What he remembers or doesn't want to remember is not important. What he did remember fully corroborates the testimony of Davis and that supports the testimony of Montella, who both tell us these defendants were involved in this horse fixing.

Now, what about Davis. He's a jockey that was certainly involved in this fixing of races. He pleaded guilty to that and awaiting to be sentenced by this Judge for that very offense. Is there any question that he did it?

Is Montella simply making this up? Of course not. Do you think somebody like Davis would plead guilty to conspire with these defendants and others to fix races if it didn't occur?

What deals are present between the Government and Davis to get on that stand and lie? Again, I say there are none. There are certainly benefits and a deal for him to testify, a motive for him to testify, but no motive for him to lie.

What is that motive to have him testify?

Here's a man who pleaded guilty to that offense and he knows by taking that stand and cooperating with the Government that the extent of that cooperation will be made known to the Judge by the Government, and not only that, but the Judge sat here and he knows what Davis did and testified for the Government, and he knows he is involved in this crime.

Do you think --

MR. VICTOR: I object that the Court is joining in the argument of coursel.

THE COURT: I think the argument at that point may be improper and we are not trying Mr. Davis at this time. The two defendants are being tried and each defendant sits independently and individually and is to be judged on the facts submitted against that defendant and only that.

MR. WOODFIELD: You recall that Montella is a friend of Vincent DiNapoli. Mr. Coiro stated that in his opening and brought it out in testimony. Mr. Coiro said in his opening, sure, when Montella begins to cooperate with the Government, who is he going to give up, Juror No. 1 and Alternate Number 1, no, but his friends.

I submit Jimmy Davis is no friend of Vincent DiNapoli or Eddie Feder. He doesn't know them. He came in an related facts as he recalled them and those facts implicated DiNapoli and Feder in this criminal venture. Also, he is awaiting sentence. Do you think he's going to lie on that stand and take the chance of being caught lying before the very judge who is going to sentence him?

Again, that's for you to determine.

I am not going to go over the facts in detail because this was a short trial, the testimony was not lengthy, we know what occurred in this case. We recall there was a meeting sometime in October of 1970, there was a call from David to Montella that, come on down, we can do business.

There was a call from Montella to DiNapoli for money for this business and they went to the Poconos, Mr. DiNapoli was there, Mr. Feder was there and other people were there. They met in the afternoon in the hotel room, Mr. Feder was there and Mr. DiNapoli was there, Salvatore Montella was there, jockeys were there, We know they fixed races and money changed hands. We also know Mr. Feder bought tickets, and he cashed tickets, winning tickets.

In the four nights these individuals participated in this scheme, they had four winning tickets. We know two of those nights they were the only winning tickets out of the hundreds of thousands purchased.

We heard testimony from Louis DiNapoli, called by the defense, that Salvatore Montella was a good handicapper and they could cover the wheel and hope they would be lucky and win big.

I submit that's not the case here. We know you can buy the entire wheel and only cost 3 or $4,000. We also learned if you do that and the winners win or finish high as they should, you won't win any money. So you just don't cover the wheel and hope to win, you bribe so that the prices go up and you win big.

Let's revuew the races in this case and see whether or not that occurred.

On the first day, October 14, the 7th and 8th races, bottom of page 3 and the top of page 4.

Montella and Davis testified that they stopped, that is they bribed in the 7th race, jockey Wholey, the last one there. His odds were 4.80. In the 7th race, the top of page 4, they stopped Davis. He was off at 5.90, they stopped Laucirica who was off at 4.30. They didn't reach the shortest horse in this

race and that horse won, Belmonts Halo.

The 8th race, testimony from Montello and Davis, that they stopped Laucirica, $3 a short horse, they stopped Clint Fromal, 1.70, a short horse, and they stopped Davis, 1.60, again a short horse.

In fact, they stopped Davis and Fromal, the two shortest horses in that race and what were the results in that, a big payoff, $28,000.

Let's go to the next day, the 15th. There, the 7th race, which is on page 7, testimony from Montella and the testimony from Davis that they stopped Davis who was riding a horse at 8.30, Fromal riding a horse Acted,. and Wholey a horse riding at $20.30.

You recall the testimony from them that they couldn't reach Goshaw. Who is Goshaw, he rode Brother Pat, the short horse, and who won that race, Brother Pat.

(Continued next page.)

MR. WOODFIELD: Now, the eight races the testimony from Davis and Montella was they stopped Davis riding at 3.40 and Laucirica riding a horse at 1.70. Those were the shortest horses in that race but they couldn't reach any other jockeys.

What occurred, the next two shortest horses finished first and second, therefore no big payoff, $5,691. What happened on the next day, the 16th? There on the bottom of Page 10, you recall the testimony from Davis and Montella that they stopped Sage, riding a horse at $5 and Surrency riding another horse at 2.90.

As you recall in the testimony from not only Davis and Montella but from Fromal that Fromal was riding a horse names Helioid, and thay Clint Fromal couldn't pull that horse because he was riding for Paul Maxwell.

It is your recollection that counts and he was a tough trainer and he couldn't stop him. What happened? Helioid finished second in the money for the big Exacta. They couldn't reach him.

We go to the eight races, who were they able to stop there. They could only stop Clint Fromal. He wasn't riding for the same stable. That's all

they could stop.

He is riding a horse at $5. But Laucirica, the testimony was, that he was riding a horse named Off Color. Who is the owner of that? Paul Maxwell, and he couldn't stop that horse. They couldn't reach that horse, the second shortest horse in the race. And who won? Off Color. The result, no big payoff. $8,504.20.

Let's go to the last day, October 17, 1970, on Page 14, we recall the testimony that we heard this, this was the last night in the meet and if they were going to reach outand win big, this was the last time to do it.

(Continued on next page.)

What occurred?

The testimony from Davis and Montello is that they reached Los Rico riding a horse at $9.20; Fromal riding at 3.10; Jimmy Davis riding a horse at $3.20, and Sage riding a horse at $22.20.

Now, who won? Royal Prince at $6.50.

Who finished second, Opal at $15.10, a long shot in Spot No. 2.

They were still alive.

Then the testimony concerning the 8th race, both Davis and Montello told us they stopped Los Rico, riding a horse $11.10; Frommel, at $7.30; Lucas riding the favorite in the race at $1.90; and they also were able to stop Richard Serrenci riding the second favorite horse in the race at $2.30.

By stopping the top two horses, who won? Builder's Lark at $22.50, and Dino's Pride at $10.50. Long shots, and the result, big money for the defendants.

The big payoff, $48,000 plus.

Let me take these back now. These are exhibits in evidence, and you can look at them during your deliberations as you so choose.

Basically, that's the Government's case. The testimony of Montella that he participated in this scheme with these two defendants, the testimony of Jimmy Davis that he participated in this scheme with these two defendants, the testimony of Frommel. The race results, the forms that Feder filled out, and we stipulated that he filled this out, and we also stipulated you have to fill this out or you don't get your money, and you have to show identification.

We also know there were conversations about having Feder have false identification, but that never came about, but Vinny DiNapoli wasn't concerned. He sent Feder up to cash the tickets.

"No one will ever find out."

From that evidence, what did the defendants offer to rebut? What did they do to overcome these facts in this case?

First they called Louis DiNapoli and he said he was at the track with Feder and his son Vinny DiNapoli. In fact, he saw Vinny give money to someone, Salvatore Montella.

He also said he cashed a winning ticket of $28,000 in his own name, using his own identification, and that's just what Salvatore Montella told us.

He also testified he was never present in the afternoon in the motel room.

He testified he was out for walks during that period of time, the same period of time when the jockeys met with Salvatore Montella, and these two defendants to fix the races and bribe the jockeys to win big.

He wasn't present then.

So what does that show us about this case? What does that evidence have to offer to rebut the government's evidence that these individuals participated in this criminal venture?

If Salvatore Montello had to give up names for the government as Mr. Coiro indicated, why didn't he give up Louis DiNapoli?

Salvatore Montello knew Louis DiNapoli cashed that ticket. He testified to that. Why didn't he throw that name into the pot?

Do you remember him stating Louis DiNapoli didn't know what was going on, that we were bribing jockeys.

He stated that on direct and cross. Louis DiNapoli told us the same thing, that he didn't know what was going on.

You consider what that evidence proves in this case.

The next witness the defendants called, Vincent Montello, brother of Salvatore, obviously hostile to his brother. He called his brother a bum on the stand.

What does his testimony add?

He tells us a story of how he drove four nights from Virginia, three and a half hours each way, to Pocono Downs, to be with his brother and these defendants at the racetrack.

He hadn't spoken to his brother in years, not close to him.

Why did he drive three and a half hours each way? Because he wanted to collect $1400 he owed him.

We know because he stated he never collected this bet.

The first night they won $28,000. If he was going to collect his debt, he should have had a good shot at collecting it the first night.

He drove three and a half hours back to Vircinia and came back two more nights and the third and fourth night, Why? To collect his debt.

Yet then he tells us he left while Mr. Feder

was collecting $48,000. He left before that money was fully handed over.

If he thought he was going to collect his $1600 debt, why didn't he stay around and collect it at that time?

I suggest this testimony is basically incredible. That's your decision. You decide who is telling the truth.

What does that testimony add to this case?

By his own statements he was not present in the rooms in the afternoon when money changed hands, when they discussed races, when these two defendants were present, when the bribes were set up. He wasn't there after the $48,000 ticket was cashed by Feder, and they went to the hotel room and piled the money on the bed and they bribed the jockeys right there, a big bonus with these individuals present.

He wasn't there.

What does he add to this case? They were called as a smoke screen.

He testified he never heard any conversation at the track concerning the bribes.

You determine whether or not he is telling

the truth.

The bribes occurred in the day. When they went to the track there were no conversations at the track because they kept a low profile there. They wouldn't talk about it, about Clint Fromel pulling the reins.

His brother tells us about how upset he would be if he knew his brother was fixing the races.

Again,you determine what weight that evidence has. Did that evidence prove to us that money wasn't paid? Did that prove to us that jockeys didn't pull the reins?

Did that prove these defendants weren't active participants in this conspiracy?

I suggest when you consider the facts, you will find you are not convinced. You are not convinced that testimony shed any light on this case at all.

What does Feder offer to rebut the evidence against him concerning his participation? The testimony of Montello and Davis, the former--

MR. RICHMAN: I object. There is no duty to offer anything.

THE COURT: Yes. The question of rebutting

evidence is improper.

MR. WOODFIELD: You will learn from the Judge's charge that no evidence has to be introduced at all.

He did introduce evidence. We agreed he was in the hospital a year later. What's the purpose of that?

I'll tell you now the relevance of that.

In the transcript at page 309, Mr. Davis made the following statements:

"Question: In other words, you fixed other races in 1971?

"Answer: Right.

"Question: Where were the races you fixed in '71?

"Answer: Again at Pocono Downs.

"Question: Were you ever charged with those crimes?

"Answer; No.

"Question: Was Mr. Black with you during that period of time?

"Answer: Do you mean fixing those races at Pocono Downs at that time?

"Question: Yes.

"Answer: Yes.

"Question: Was Mr. Feder there at any time during that period of time, Mr. Davis?

"Answer: I seem to think he was.

"Question: In 1971?

"Answer: I'm not sure. I'm not certain."

That's the cross-examination by Richman.

To rebut the testimony, to introduce evidence to attempt to contradict the government witnesses, we stipulated during that period of time during 1971 Mr. Feder was in the hospital.

Again I submit, does that tear down the government's case or point out to you the fact that Mr. Montello and Davis are lying? That these races were not fixed, that they didn't win big money?

You listened to the testimony and you have to determine where the truth lies. At the end of this case and at the end of all the arguments, and draw that distinction between a motive to lie and a motive to testify, and leave your passions and emotions outside the juryroom and weigh the facts in this case you will find these defendants participated in this criminal scheme.

Thank you.

* * *

h2 AFTERNOON SESSION"

THE COURT: Bring in the jury.

You have ten minutes on rebuttal.

(The jury thereupon returned to the courtroom)

THE COURT: Mr. Woodfield will now give his rebuttal and then the Court will charge you on the law.

MR. WOODFIELD: Ladies and gentlemen, I will be just a few minutes. You have heard lengthy arguments and you will soon deliberate in this matter.

Let me just raise a few points that I consider important and you decide whether or not you think they are relevant.

First of all when I sat here and listened to this summation I got the distinct impression that Jimmie Davis never even testified in this case.

And I recall Mr. Richmond -- how did Mr. Richmond deal with the testimony of Jimmie Davis -- I believe he said something to the effect that Davis' word does not mean anything, and passed right on. And the only thing he really raised in Jimmie Davis' testimony was he is questioning whether or not Jimmie Davis in fact properly picked out his client in this scheme. He is questioning the identification. Well,

you recall Jimmie Davis' testimony. You recall his taking the stand. Was there any hesitancy in his saying those men, Vincent DiNapoli and Edward Feder -- was there any hesitancy in choosing those men. Is that a real issue for you to ponder now in the jury room? I suggest to you it is not.

But in any event what does Jimmie Davis' testimony add to this case? He identifies both defendants. He identifies them as participants, their presence in the room when the bribes took place. And their knowledge -- he raises their knowledge. You heard a lot about knowledge. Did these men have knowledge a conspiracy was taking place? What does Davis say? Do you remember on one occasion he says that Feder was on the bed nodding both ways, affirmatively, and denials of Sonny Montella's questioning about how shall we fix this race; or shall we stop this horse; how should he bet on this horse. He was there. He saw money change hands. That is knowledge, ladies and gentlemen.

What about Vincent DiNapoli? What did Jimmie Davis have to say about him. He recalls one time when Vincent DiNapoli disagreed with Salvatore Montello that, "we are paying that pinhead too much,"

pinhead being a derogatory term for Jimmie Davis, the jockey. "We are paying that pinhead too much." And is that knowledge?

They didn't know what was going on with money passing to jockeys in a hotel room before the races, and they talked about races? And then they have to do something. Well, what do they do in this conspiracy? After they had knowledge they bought tickets at the racetrack. They cash winning tickets at the racetrack.

They split up $48,000 on the last night. And you decide --

MR. COIRO: I object to the word "they cashed winning tickets".

MR. WOODFIELD: Well, we know who cashed tickets. We know that Mr. Feder cashed the winning ticket. And we know that Vincent DiNapoli got his piece of the $48,000 ---

MR. COIRO: That I object to, if your Honor please, and move for a mistrial and for the withdrawal of a juror.

MR. VICTOR: And I further object to the fact that --

MR. COIRO: This is a gross misstatement, Mr. Woodfield.

THE COURT: In any event the question of what was done in reference to cashing of the tickets, the money, whether or not it was divided is strictly up to the recollection of the jury and the testimony in the case. And you may have it read back at any time that you desire and to determine what that testimony actually was.

MR. WOODFIELD: It is not what I say to you and it is not what Mr. Richmond or Mr. Coiro say to you. It is what you recall. And when they tell you that Jimmie Davis and Salvatore Montello were lying, you don't accept at face value. You get in that room and you recall what you heard him testify to and what you saw of their demeanor.

These gentlemen had an opportunity to cross examine. What did you think of that? Now think back to the testimony in the case and not our argument to you.

Mr. Coiro stated that the Government is misleading you in this case. The Government has created this smokescreen about whether or not they contested the fixes that took place.

Well, you recall the testimony and the cross examination of these two men, Montello and Davis,

testimony concerning about how much money was paid. You have to pay -- you bribed -- I mean not bribed -- you had to spend on this wheel thousands of dollars, and then only one thousand dollars. They try to make a mockery of the whole thing. And then Vinnie Montello gets on the stand and, well, that is what you do, you buy the whole wheel and if you are lucky you win. Well, I submit to you they started off in this case contesting that but then let's play a little game. You put yourself in Mr. Coiro's shoes and you put yourself in Mr. Richmond's shoes, what would you do when you heard the evidence in this case --

MR. COIRO: Your Honor, I object to this. The lawyers aren't on trial.

MR. WOODFIELD: There is nothing wrong with that your Honor.

THE COURT: No, it is improper. It is not proper as to what they were doing, or to put them in their place. They represent defendant clients. They have a right to do whatever they think is right.

MR. COIRO: I will stand in his shoes any time.

THE COURT: We don't need that statement. That statement is to be disregarded the same as the Government attorney will try his case as he sees fit

with all the circumstances and the evidence. Okay. Allright, go ahead.

MR. WOODFIELD: The issue now becomes whether or not you believe Montello and Davis. That is what you are here to decide. And you don't decide that from arguments of attorneys. You decide that from the evidence you heard, their testimony on the stand.

But talking about misleading you, let me see whether or not you agree with me when I say that Mr. Coiro is misleading you or attempting to do so --

MR. VICTOR: I object to that. It is not a matter of whether the attorneys --

THE COURT: The lawyers come in and try the case. It's a question of the testimony in the case. Whatever a lawyer does is never evidence in the case. Never.

MR. WOODFIELD: Is this relevant? That Mrs. Montello was called so you could decide whether or not she is a pig. Is that relevant to the facts in this case? Is that relevant to the fact of whether or not these two men participated in a criminal venture to bribe jockeys? I submit to you that it is not.

And further when Mr. Coiro states, "Give that a final stamp of approval to Salvatore Montello", ladies

and gentlemen, we are not here to put the stamp of approval on Salvatore Montello. If we were I am sure we could decide that with a show of hands right here. It is not a question of whether you approve of this gentleman. It is whether or not the facts in this case show that these men participated in a criminal venture.

Is that evidence -- is that something that is being argued to you that they want you to take your emotions, your sympathies, into that jury room, to put a stamp of approval on Salvatore Montello. We are not here to decide that.

He is not a very likeable bloke, I certainly admit that. But it gets back to the question is there a reason, is there a motive for him to lie? To testify, of course. Of course there is reason for him to testify.

Why does the Government call people like that as witnesses in the case? This is a criminal conspiracy. A conspiracy in and of itself means something secretive, something that goes undetected. How can the Government bring this to your attention but to call participants in this criminal venture like Salvatore Montello, like Jimmie Davis, to tell us what happened and who did.

You may not like Salvatore Montello very much, but I assure you that there are two people in this courtroom who like him a lot less than you.

The motive to lie for Salvatore Montello? The motive to lie for [illegible] Davis and for Clint Formal? You decide.

The defendants would like you to believe -- to believe Montello and to believe Davis when they say they are criminals; when they say they are felons; when they say that they commited crimes; when they say that they participated in this criminal venture. They want you to believe them, believe both of them, when they tell you they participated in this criminal venture with other people. But don't believe them now when they say they participated with these two individuals. You follow the consistency of that. You decide just a mere coincidence that these gentlemen were down in Pocono Downs in Pennsylvania in October 1970; just a coincidence they are in the motel on the same day when jockeys were there and discussions of the fixing of races occurred; just a coincidence that hundreds of tickets were bought that night --

MR. VICTOR: I object to it as not fair comment upon the evidence. There is no denying that these

individuals were present from the beginning --

THE COURT: He has the right to comment. All right.

MR. WOODFIELD: Just a coincidence that the favorite horses in these races did not win? Just a coincidence that these men had four winning tickets four nights in a row, and two of those nights being the only winning tickets of the hundreds that are purchased? Just a coincidence that they win in excess of $90,000 in this four-day frolic in the Poconos? Just a coincidence that they go to Eddie Feder's room after he cashed the tickets and to split the money up on the bed and give bonuses to jockeys?

They would love you to believe that this is all just a matter of coincidence, just an unfortunate set of circumstances that occurred against these two poor innocent men.

Well, I suggest to you that is the proof beyond a reasonable doubt. Thank you.

(end of Mr. Woodfield's summation at 3:25 o'clock p.m.)

JUDGMENT.

United States of America vs.

United States District Court for

EASTERN DISTRICT OF NEW YORK

DEFENDANT: VINCENT DI NAPOLI

DOCKET NO. 75 CR 741

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 1 DAY 14 YEAR 1977

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Paul Victor, Esq.
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of violating Title 18, U.S.C. Sect. 224, in that on or about and between Oct.12th and Oct. 17th, 1970, both dates being approximate and inclusive, the defendant with others, did knowingl and wilfully conspire together to carry into effect a scheme in commerce to influence by bribery, sporting contests, to wit: to influence the outcome of horse races at Pocono Downs, Pa., with knowledge that the purpose of such scheme was to influence by bribery the aforesaid sportin contests. It was part of said conspiracy that the defendant with others would bribe jockeys of various "Exacta" races, which affected the outcome of said races.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

3 years. Defendant to serve 3 months of weekends from Friday at 8:00 P.M. to Sunday at 8:00 P.M. - balance of sentence on probation and to pay a fine of $1,000.00. Execution of sentence stayed pending appeal.

SPECIAL CONDITIONS OF PROBATION

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ JAN 17 1977 ★
TIME A.M.
P.M.

BEST COPY AVAILABLE

JUDGMENT

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Date 1-14-77

33

Service of three (3) copies of
the within is
hereby admitted this day
of , 197

Attorney for

RECD
U.S. ATTY
MAR 29 2 53 PM '77
EAST. DIST. N.Y.